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1967

Supreme Court of the United States

No. ~~1448~~ 216

WALLACE FRANKLIN SATTERFIELD,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

PETITION FOR CERTIORARI

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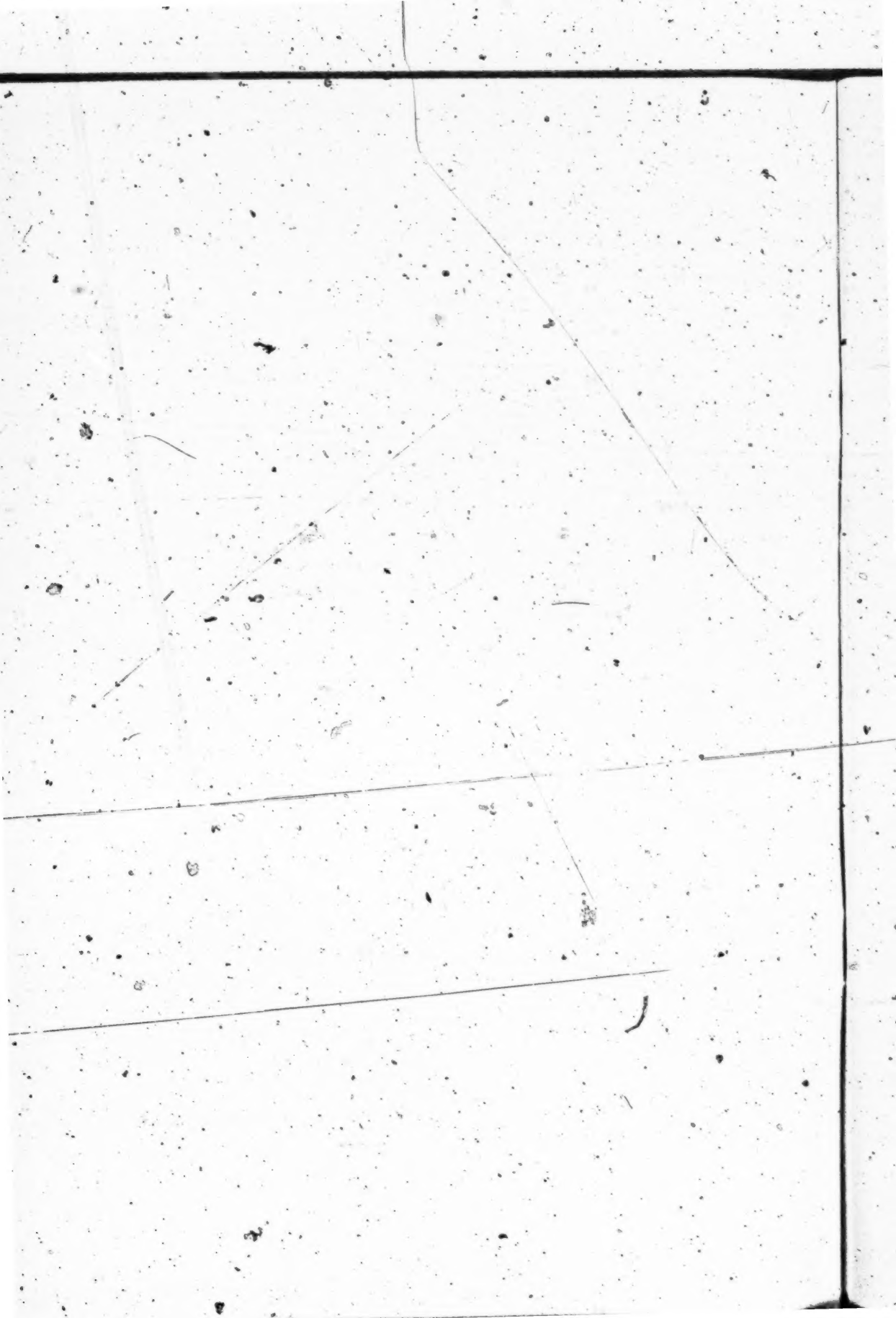

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To the Honorable the Chief Justice and the Justices of the Supreme Court of the United States:

OPINIONS IN COURTS BELOW

There were no written opinions in the courts below.

GROUNDS FOR JURISDICTION

The judgment sought to be reviewed is a final judgment by the Supreme Court of Appeals of Virginia, dated and entered on the 7th day of March, 1967, which affirmed a conviction of the petitioner for first degree murder in the Circuit Court of Halifax County, Virginia pursuant to a trial held on the 29th and 30th days of July, 1966.

Petitioner seeks reversal of the aforesaid final judgment on the grounds that the Supreme Court of Appeals of Virginia should have reversed the conviction of the petitioner because the petitioner's constitutional rights, as set forth in *Miranda* v. *Arizona*, 384 U.S. 436 (June 13, 1966),* specifically the right against self-incrimination guaranteed by the Fifth Amendment to the United States Constitution and the right to counsel guaranteed by the Sixth Amend-

* Hereinafter referred to as *Miranda*.

ment, were not protected at his trial to his prejudice. Because the grounds for this petition are based on federal constitutional rights specifically and duly set up and claimed by the petitioner in the courts below and re-asserted here, it is submitted that this Court has jurisdiction to review the final judgment of the Supreme Court of Appeals of Virginia in this case by a writ of certiorari. For this invocation of jurisdiction, petitioner relies upon the statutory provisions of 28 U. S. C. § 1257 (1964), which provides in part as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> By writ of certiorari
>
> * * *
>
> where any . . . right, privilege or immunity is specially set up or claimed under the Constitution . . . of . . . the United States."

QUESTIONS PRESENTED

I. Whether the use in evidence in a post-*Miranda* trial of a confession obtained in police custody in the absence of counsel violated the petitioner's Fifth and/or Sixth Amendment rights where prosecution evidence tended to corroborate the testimony of the petitioner that the confession was induced by a promise that freedom on bond would be thereby facilitated.

II. Whether such use violated Fifth and/or Sixth Amendment rights where the confession was obtained after a police officer overrode the petitioner's attempts to invoke his right to silence and indicated to him that silence was a de facto admission of guilt?

III. Whether such use violated Fifth and/or Sixth Amendment rights where the petitioner did not understand his right to counsel prior to first confessing?

IV. Whether such use violated Fifth and/or Sixth Amendment rights where the petitioner was never advised of his right to court-appointed counsel?

V. Whether such use violated Fifth and/or Sixth Amendment rights where the petitioner, a 23 year old mental defective with a history of near-fatal spinal meningitis, confessed to a version of facts subject to prior police deduction after having been subject while in police custody to sickness, cold, alternating verbal abuse and intimidations of friendship from a police officer and other forms of psychological pressure?

CONSTITUTIONAL PROVISIONS

Petitioner relies upon the Fifth and Sixth Amendments to the United States Constitution which are set forth below in their entirety:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. U. S. CONST. amend. V
>
> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial

jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. U. S. CONST. amend. VI

STATEMENT OF THE CASE

(A) Material Proceedings In The Lower Courts

The petitioner was tried in the Circuit Court of Halifax County, Virginia on the 29th and 30th days of July, 1966 on a charge of first degree murder in the death of Jeffrey Ronald Brenner. (R. 5-11)* A preliminary hearing had been held on June 24, 1966 (T. 406-407)† after which the petitioner had been bound over to a grand jury, which had returned an indictment during the July, 1966 term of court. (R. 2)

The federal question sought to be reviewed is the question whether the admissibility into evidence at the trial of incriminating statements made by the petitioner while in

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* References to the Record are indicated by the letter R., followed by the appropriate page number, except that references to the Transcript of the trial on the 29th and 30th of July, 1966 are indicated by the letter T., followed by the appropriate page number of the Transcript. (The entire Transcript of the trial on the 29th and 30th of July, 1966 was packaged together as an entirety by the Clerk's Office of the Circuit Court of Halifax County, Virginia as page 50 of the record. This treatment of the Transcript was left unchanged when the Record was made up by the Clerk of The Supreme Court of Appeals of Virginia.)

† Reference to that part of the Record contained in the Transcript of the trial on the 29th and 30th of July, 1966 are indicated by the letter T., followed by the appropriate page number of the transcript.

police custody and in the absence of counsel violated the petitioner's Fifth and/or Sixth Amendment rights as set forth in *Miranda*. This question was raised in the Courts below in the following manner:‡

Prior to the introduction of the confession into evidence, counsel for petitioner, during a conference in the chambers of the Circuit Court of Halifax County, objected to the introduction of any confession of the petitioner into evidence. (T. 85) Pursuant to an agreement reached during the conference in chambers (T. 84-89) the evidence of the circumstances surrounding the obtaining of the confession was first heard by the Court in the absence of the jury. (T. 90-192) Counsel then argued the admissibility of the evidence, (T. 191-222) counsel for the petitioner contending that the evidence should be excluded because the petitioner's Constitutional rights as set forth in *Miranda* had not been proven to have been complied with. (T. 196-216, 219, 222) The Court ruled that the confession was voluntary and complied with the spirit of *Miranda* and allowed it into evidence. Counsel for the petitioner took exception to this ruling. (T. 223) This exception was reiterated in the presence of the jury just prior to the testimony of the confession. (T. 227-228) Later, when additional evidence regarding the circumstances surrounding the confession revealed that the petitioner had attempted during the course of his interrogation to invoke his right to silence, counsel for the petitioner moved again for exclusion of the evidence, (T. 245) was overruled (T. 245) and excepted to the ruling

‡ A brief summary of the manner in which the federal question was raised is set forth in this petition with reference to the portions of the record relied upon; these portions are set forth verbatim in Appendix A; because they are voluminous, Appendix A is separately presented in compliance with Rule 23 (f) of the Rules of The Supreme Court of The United States.

of the Court. (T. 245) At the conclusion of all the evidence, counsel for the petitioner moved for a mistrial on the grounds that the admission of the confession into evidence had been prejudicial error. (T. 456) This motion was overruled (T. 456) and exception was taken. (T. 456)

The jury found the petitioner guilty of murder in the first degree and sentenced him to forty years confinement in the state penitentiary. (T. 459-461, R. 25) The petitioner moved that the verdict of the jury be set aside (T. 462, R. 40-42) and a new trial granted (R. 40-42) on the grounds that the admission of the confession into evidence violated the defendant's Constitutional rights as set forth in *Miranda*. (R. 40-42) This motion was argued on October 8, 1966 in the Circuit Court of Halifax County. (R. 40-42) On October 10, 1966, the Court overruled the motion, stating that the confession was voluntary and that *Miranda* had been complied with. (R. 31-32) On the same day, the Court entered final judgment on the verdict. (R. 28)

In compliance with Rule 5:1 § 3(e) of the Rules of the Supreme Court of Appeals of Virginia, transcripts of the record and stipulation of counsel were signed and certified by counsel, signed by the Court and filed in the Clerk's Office of the Circuit Court of Halifax County on December 3, 1966. (R. 38, 39, 42; T. 471-72) In compliance with Rule 5:1 § 4, Notice of Appeal and Assignment of Error and an Amended Assignment of Error were filed in the Clerk's Office on December 5, 1966. (R. 43-46) The Assignment of Error, as amended, relied solely upon the admission of the confession into evidence as contrary to the petitioner's Fifth and Sixth Amendment rights as set forth in *Miranda* as grounds for reversal of the final judgment of conviction in the Circuit Court of Halifax County. (R. 43-46)

In compliance with Rule 5:1 § 6, counsel for petitioner on January 10, 1967 designated parts of the record to be

printed in event a writ of error be granted by the Supreme Court of Appeals of Virginia. (R. 47-49) In compliance with Sec. 8-475 and Sec. 8-463 of the Virginia Code and Rules 5:3 and 5:4 of the Rules of the Supreme Court of Appeals of Virginia, the record in the case and a petition for writ of error and supersedeas was filed in the Supreme Court of Appeals at Richmond, on February 9, 1967, (R. 50A, 51, 55-56, and see notations of receipt of Transcript and Table of Contents of Circuit Court of Halifax County) the grounds stated in the petition for appeal for reversal of the final judgment of conviction were based solely on the contention that the petitioner's Constitutional rights as set forth in *Miranda* had been violated by admission of the confession into evidence. (R. 51-56)

On March 7, 1967, the Supreme Court of Appeals of Virginia denied the petition for a writ of error and affirmed the judgment of the lower court, the effect of which under the provisions of Sec. 8-476 of the Virginia Code was a final judgment upholding the conviction of the petitioner. (R. 57)

(B) Statement of Material Facts

The confession in this case was obtained beginning at approximately 8:15 p.m. on January 19, 1966. (T. 96, 228) Prior to that time the petitioner had been in the custody of police authorities for over seven hours and forty minutes, beginning sometime before he was formally committed to jail at 12:40 p.m. (T. 92-93, 125, 162, 225-226) While in custody and before the confession was first obtained, the petitioner was interrogated twice by Mr. C. T. Coates, Halifax County sheriff, alone in the sheriff's office, once in the middle of the day and again beginning about 6:30 p.m.

or 7:00 p.m. (T. 93, 110, 152, 153-154, 158, 163, 166-167, 225-226, 270-271, 275-276)*

The confession was first obtained orally at 8:15 p.m. in the sheriff's office in the presence of the sheriff and two deputies, Mr. Roy Pruitt and Mr. Monroe Anderson, (T. 110-111, 124) after the petitioner had sent word that he wanted to see the sheriff. (T. 94, 97, 167, 226, 268, 273) Immediately after the oral confession was obtained, the sheriff turned on a tape recorder and obtained a taped confession. (T. 110-111, 124) The next day the taped confession was transcribed (T. 131, 227) and signed by the petitioner. (T. 97-98, 130-131, 137, 169, 227, 269, 274)

At none of these times did the petitioner have the benefit of legal counsel, the petitioner not being represented by counsel in the case until over a week later. (T. 187-188, 270)

The petitioner is mentally defective. Using the Wechsler Adult Intelligence scale, he has a full scale Intelligence Quotient of 67, a verbal Intelligence Quotient of 71 and a performance Intelligence Quotient of 65. (T. 150, 396) The authorities at Southwestern State Hospital reported that "It is believed by the psychologist that he is able to function in the lower limits of mental deficiency, mild." (T. 150, 396)

At the age of nine, the petitioner was afflicted with an almost fatal case of spinal meningitis. (T. 160-161, 383,

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* There was no outright testimony that the petitioner and the sheriff were alone during the second interrogation, beginning at approximately 6:30 p.m. or 7:00 p.m. However, this is implicit in all of the testimony about this interrogation. In addition, no one except the sheriff and the petitioner testified about what went on during this interrogation. The only Commonwealth witnesses besides the sheriff who saw the petitioner in the jail that day, Deputy Roy Pruitt and Deputy Monroe Anderson, testified that they were not present during this interrogation. (T. 270-271, 275-276) The sheriff testified that he and the petitioner were alone during the first interrogation in the middle of the day. (T. 152)

444-445) He never passed an academic subject in his life. (T. 159-160) He was pushed up from one class to the next despite complete failure in academic grades (T. 160) through the sixth grade, when he dropped out of school. (T. 159)

At the time of the confession the petitioner was twenty-three years old. (T. 228) He was working at that time as a warp mover in a local mill. His duties consisted of picking up with his hands one end of a steel warp with another worker on the other end and moving the warp a short distance. (T. 172-176) The petitioner testified that the only worry involved in the job was to make sure not to drop the warp on another worker. (T. 176)

The petitioner's brother-in-law testified that the petitioner was "weak-minded." (T. 386) "I think he can easily be led. By anybody . . . , He's weak. The boy is weak-minded. He has no education. So therefore, he just can't concentrate one question from another hardly, not unless you explain the whole detail out to him." (T. 386)

There is a direct conflict in the testimony as to whether the petitioner was ever advised of any of his constitutional rights before he first confessed. However, the tape recording, made after the oral confession was obtained, (T. 110-111, 124) conclusively established that even if the petitioner was advised of his constitutional rights before he first confessed, he nevertheless did not understand that he had a right to legal counsel prior to this initial confession.

The relevant portion of the taped statement was as follows:

> SHERIFF: You understand Frank, that you don't have to make any statement if you don't want to. You understand that?
>
> PETITIONER: Yes.

SHERIFF: You understand that any statement you make can be used against you in court. You understand that?

PETITIONER: Yes.

SHERIFF: You understand that you have a right to an attorney before you make a statement. You understand that?

PETITIONER: That's right. I reckon. I don't know about that.

SHERIFF: Now wait a minute. You have the right to an attorney before you make any statements. You understand that?

PETITIONER: Oh, yes. (T. 95, 111-112, 228-229)*

The petitioner testified that this dialogue, coming after he had already confessed, was the first time he was ever advised of any of his constitutional rights (T. 163-164) and that even then he did not know the meaning of the word "attorney," (T. 159, 161, 164-165) although he would have understood what was meant by the word "lawyer." (T. 159)

The sheriff testified that prior to the taped dialogue the petitioner had been advised three times of his "rights," (T. 92, 94-95, 106-111, 226-227) once at the beginning of the initial interrogation at midday, again at the beginning of the second interrogation at about 6:30 p.m. or 7:00 p.m. and the third time just before the oral confession was obtained. (T. 106-111)

However, there was never any testimony by anyone that the petitioner was ever advised of his right to court-appointed counsel if he could not afford a lawyer. He was not

* For an analysis showing that the petitioner's statements that he didn't "know about" his right to counsel came after he had already confessed, see Appendix B.

advised of that right on tape: (T. 95, 111-112, 228, 229)

There was no testimony whatever by the sheriff or anyone else that if the petitioner was advised of any of his rights before the oral confession was obtained, he indicated in any manner that he understood the substance of what was being told him.*

There was no evidence at the trial that if the petitioner was advised of his constitutional rights he ever stated that he wanted to waive these rights.

On the contrary, it was shown by the sheriff's testimony that the petitioner attempted to invoke his right to silence, both at midday and during the interrogation beginning at 6:30 p.m. or 7:00 p.m., and that his desire not to be interrogated was overriden by the sheriff.

On direct examination before the jury, Sheriff Coates testified that when he questioned the petitioner at midday, the petitioner made a few statements and then refused to say anymore. Sheriff Coates' testimony on this point was as follows:

> I talked to him in my office there for a little while, and Doctor Wooding had indicated to me that this poisoning was placed in some beans. And, I questioned him about the beans. And, he made the statement, he said, "No. The poison was not put in the beans, but put in something else."—or something to that effect, he said. And, he didn't explain what it was in. He didn't say. That's all he would tell me. (T. 225-226)

The sheriff further testified that the petitioner also wanted to avoid being questioned during the second interrogation beginning at 6:30 or 7:00 p.m. (T. 243)

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* There being no such evidence, no reference to the record is possible. However, for an elaboration on this point see Appendix B.

Again, on cross-examination before the jury, Sheriff Coates, in an elaboration on his testimony, stated that the defendant was generally uncooperative and did not want to answer questions. This testimony was as follows:

> Q I'm talking about what you asked him during the day?
>
> A I don't remember whether I asked him about that before. He wouldn't tell me anything. He wouldn't cooperate.
>
> Q Didn't want to talk to you?
>
> A No.
>
> Q Didn't want to talk to you?
>
> A No. And, I didn't talk to him. (T. 254)

Despite Sheriff Coates' statement that he "didn't talk to him," the sheriff's own testimony was that after the defendant attempted to invoke his right of silence at midday (T. 225-226) the sheriff on his own initiative (T. 226) again interrogated the petitioner beginning at about 6:30 p.m. or 7:00 p.m. (T. 93, 110, 226)

Much of the evidence regarding the events leading up to the confession was in conflict. As to most of these events the only possible witnesses were the petitioner and Sheriff Coates, there being no one else present during the crucial interrogations (T. 152 and see fn. p. 8 *supra*) and there being no permanent recording made by police until after the confession was first obtained. (T. 109)

As to much of the substance of his two private interrogations of the petitioner, the sheriff testified to a lack of memory; (T. 101, 115-116, 126, 244, 245, 247, 248) specifically, the sheriff testified that he could not remember what

questions he asked the petitioner (T. 244) or whether he asked certain questions. (T. 244-245, 248)*

A summary of the testimony regarding the events leading up to the confession delineating the source of testimony in the areas of conflict, is organized as follows:

The sheriff's office received word from the Halifax County coroner on January 18, 1966 that Jeffrey Ronald Brenner, step-child of the petitioner, had died of arsenic poisoning on December 22, 1965. (T. 91, 225) On the morning of January 19, 1966 the sheriff went to the home of the petitioner and took in custody the petitioner's wife, the mother of the dead child. (T. 91-92, 225) Sometime in the morning, the petitioner's wife, Mrs. Mary Brenner Satterfield, signed a written statement (T. 23, 242) tending to incriminate the petitioner. The statement included the fact that the petitioner was beneficiary of insurance on members of the family. (T. 242) Mrs. Satterfield's story, as developed at the trial, was that she and all three of her children had become sick on the night of December 21, 1965 after eating pinto beans and Ritz crackers and drinking a Diet-Rite Cola. (T. 9-14) The child died at approximately 4:30 p.m. on December 22, 1965. (T. 53)

Sometime in the mid-morning of January 19, 1966, the petitioner went to the courthouse square in Halifax, Virginia and entered the building used to house the jail and the

* The sheriff testified that although he could not remember the "exact" questions he asked the petitioner he could remember a substance of them. (T. 244) However, the sheriff testified that he could not remember whether he asked the petitioner if he had insurance on his wife, (T. 243) or if he (the petitioner) had bought poison before the death of the deceased. (T. 244-245) The sheriff also testified that he could not remember whether he explored in his questioning of the petitioner facts obtained in a statement made earlier by the petitioner's wife. (T. 247)

sheriff's office in order to see about his wife. (T. 152-153, 165-166) He was not taken to his wife but was told to wait. (T. 153-154)

After talking to the petitioner's wife at the Commonwealth attorney's office, the sheriff went to the jail and finding the petitioner there took him into the sheriff's office for a private interrogation. (T. 92, 152, 154, 225, 242) The length of this first interrogation was not established in the record. During the first interrogation, the petitioner denied any guilt (T. 93) but the sheriff found suspicious a statement by the petitioner that the arsenic poisoning was not put into pinto beans located in the Satterfield home at time of the death of the child. (T. 93-94, 114-115) The petitioner was formally placed under arrest at 12:40 p.m. (T. 92, 226) The sheriff contacted the Halifax County Commonwealth's attorney who advised him that bond should be set for $10,000. (T. 249)

When the petitioner balked at answering questions, (T. 225-226, 245). the sheriff implied that a refusal to disclose information would indicate the petitioner's guilt. The sheriff did this in the following manner: He asked the petitioner if he would be willing to take a lie detector test but warned the petitioner that if he had anything to hide, the test would "bring it out." (T. 243)

The petitioner testified that during the midday interrogation the sheriff cursed him and otherwise verbally abused him. (T. 154) This testimony was uncontroverted in the record.

The petitioner also testified that he had not eaten since before the day previous to the confession (T. 153) and that when he ate a hot dog and drank a Coca-Cola shortly before the first interrogation he vomited it back up. (T. 153) The petitioner testified that he was cold, because of cold winter weather and because he was only wearing a short

sleeved shirt, and dungarees. (T. 155-157) None of the above was controverted in the record. The sheriff testified that he could not remember the weather conditions (T. 115) and that he could not remember what kind of shirt the petitioner was wearing. (T. 115-116)

The petitioner testified that the sheriff indicated to him that a confession by him would facilitate his freedom on bond. (T. 158, 178) The sheriff appeared to deny this. (T. 98, 99, 106, 236) However, Mrs. Odell Abbott, the court reporter at the petitioner's preliminary hearing, testified that at that hearing the sheriff testified as follows:

> Q Did you tell him if he made a confession he could get out on bond?
>
> A I do not know. (T. 410)

When asked during the trial what his testimony on this point had been at the preliminary hearing, the sheriff first stated that he did not remember what was said at the preliminary hearing (T. 98-99) but shortly thereafter denied having made the testimony cited above. (T. 99) However, at one point the sheriff's testimony could reasonably be interpreted as meaning that he did not promise to personally post the petitioner's bond in return for a confession. This testimony by Sheriff Coates was as follows:

> Q Isn't it a fact that in the preliminary hearing you were asked the same question and you said you didn't know?
>
> A I don't know what was said. I know I hadn't promised him any bond. The bond had been set. It wasn't up to me to bond him. (T. 98-99)

It was uncontroverted that at about 5:00 p.m. that day, the petitioner's father, Mr. Bedford Satterfield, came with a friend to the building housing the jail and the sheriff's

office in the hopes of having his friend post bond for his son's release. (T. 142-145, 440) Mr. Satterfield testified that he asked the sheriff what chances he had of getting the petitioner out on bond and that the sheriff replied that he, the sheriff, would prefer that Mr. Satterfield leave the petitioner in jail overnight so that he could have a lie detector test made the next day. (T. 142-145, 440) Mr. Satterfield testified that he then dropped his attempt to post bond and went home (T. 142-148, 440) because he did not want to appear to be acting "funny about it." (T. 453)

The sheriff testified as follows regarding Mr. Satterfield's attempt to post bond:

> Q Now, isn't it a fact that Mr. Bedford Satterfield came here the afternoon before Frank Satterfield made the statement?
>
> A That's right.
>
> Q Came here and asked you something about the bond the same afternoon that you arrested him before the statement was made? Didn't Bedford Satterfield come here this afternoon and ask you about the bond?
>
> A He asked me what the bond was, and the Commonwealth attorney said the bond was ten thousand dollars ($10,000) and that's what I told him.
>
> Q Well, now isn't it a fact when he came here and asked you about the bond that you said, "Bed, I'd rather you leave him here overnight. I got a polygraph test in the morning."
>
> A I told him we were going to take him the next day for a polygraph test.
>
> Q I know. But, didn't you express a desire that he leave him there.
>
> A I don't recall that.
>
> Q You don't recall whether you did or not?

A I told him we were going to take him for a polygraph test the next day. (T. 104-105)

It was uncontroverted in the evidence that upon completion of the taping of the confession that night, the sheriff called the petitioner's father. (T. 103-104, 144, 146-147, 237-238, 278, 440, 451, 454) Mr. Satterfield testified that at that time the sheriff said that the petitioner had confessed and that Mr. Satterfield could come get him. (T. 144, 146-147, 440, 451, 454) The sheriff testified that he told Mr. Satterfield that his son had confessed and that his son wanted him to come get him. (T. 103-104) At another point the sheriff testified that he called Mr. Satterfield at the petitioner's request but said nothing at all about Mr. Satterfield's coming to get his son. (T. 238)

The sheriff admitted in his testimony that the petitioner wanted to be bonded out. In this regard the sheriff testified, "Now what he (the petitioner) wanted, he wanted bond. I told him he could get—well, he knew he could get bond." (T. 103)

The evidence showed that at the preliminary hearing, the sheriff admitted that he had assured the petitioner while interrogating him that he, the sheriff, was a friend of the petitioner's family. (T. 409-410) However, at the trial the sheriff gave contradictory testimony on this point. While the jury was out the sheriff testified that he didn't recall having assured the petitioner of his friendship with the petitioner's family and he couldn't remember what he had said on that subject at the preliminary hearing. (T. 100-103) Later that day, in the presence of the jury, the sheriff absolutely denied having assured the petitioner that he was a friend of his family and denied having admitted this at the preliminary hearing. (T. 238-241)

At the end of the first interrogation, the petitioner was placed in a solitary confinement cell. (T. 155) The bed in

the cell did not have a mattress, blanket, sheets or pillow. (T. 97, 139-140, 179) The petitioner testified that he was very cold in the solitary confinement cell. (T. 155-156) He testified that supper was brought to him but that he could not eat it. (T. 166) This testimony was never directly contradicted.*

The petitioner testified that when the sheriff brought him into the sheriff's office for the second private interrogation (this interrogation began at about 6:30 p.m. or 7:00 p.m.—T. 93, 110, 226) the sheriff immediately turned up the heat in the office. (T. 158) This testimony was uncontroverted in the record. The petitioner testified that he asked the sheriff for bedding in his cell, but that this request was denied. (T. 158) The petitioner testified that he never was given any bedding that night. (T. 179-180) Tending to corroborate this testimony was the testimony of Deputy Roy Pruitt who stated that "on the day he's locked up, you don't usually fix the beds at night when they lock the cell on the day you were locked up." (T. 140) The sheriff testified that he did not know what accommodations the petitioner had but that as a general practice, "before they go to bed at night, they have a mattress, two sheets, a pillow, pillow case, and a blanket." (T. 97)

The petitioner testified that during the second interrogation, he complained to the sheriff of being sick. (T. 177) Before the jury, the sheriff denied this, (T. 235) however, while the jury was out, the sheriff testified that he did not remember whether the petitioner needed a doctor. (T. 126) Soon after that the sheriff stated, "I didn't see any reason for him to have a doctor." (T. 126)

The petitioner's brother-in-law testified that he saw the petitioner vomit the morning after the confession (T. 184)

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* The sheriff did testify to his understanding that the petitioner had had supper. (T. 96-97)

and that he asked the sheriff to get the petitioner a doctor but that the sheriff did not comply with this request. (T. 184, 188) The sheriff testified that he could not remember whether the family had asked for a doctor and did not remember whether he got one (T. 128) but that if the family had asked that the petitioner be provided medical attention he, the sheriff, would have seen that he got it "if I thought he had needed one or if he had asked for one." (T. 128) Mrs. Abbott, the court reporter at the preliminary hearing, testified that at the preliminary hearing the sheriff was asked "Did his daddy tell you he was sick?" and answered "I believe he did."

The petitioner testified that during the second interrogation the sheriff again cursed and otherwise verbally abused him. (T. 158, 167) This testimony was uncontroverted in the record.

The sheriff testified that by the end of the second interrogation he had completed plans to take the petitioner to Appomattox the next day for a lie detector test which the petitioner had agreed to take. (T. 94) The evidence indicated that by this time the sheriff had elicited from the petitioner the fact that the petitioner had purchased, prior to the death of his step-son, a bottle of liquid rat poison. (T. 232, 244-248)*

The length of the second interrogation was not established at the trial. At the end of this interrogation, the sheriff sent the petitioner back to solitary confinement, (T. 155) telling the petitioner that if he, the petitioner, had anything to tell the sheriff to let the jailer or the deputies know.

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* The sheriff testified that he might have gotten this information before the end of the second interrogation, but that he thought he was not told about this until he obtained the oral confession. (T. 244-246) However, in the taped statement (taken immediately after he oral confession was obtained that night) the sheriff stated, "You told me today you kept it (the bottle of poison) in the car." (T. 232)

(T. 94, 97, 226) Fifteen or twenty minutes later the petitioner sent word that he wanted to talk to the sheriff. (T. 94, 97, 167, 226, 268, 273)

The petitioner was brought into the sheriff's office at about 8:15 p.m. (T. 96, 228) The petitioner testified that when he was brought into the sheriff's office the sheriff again turned up the heat. (T. 177) This testimony was uncontroverted. The petitioner testified that the sheriff stated that he knew "damn well" that the petitioner was guilty. (T. 177) However, in the testimony of Deputy Monroe Anderson in regard to the events in the sheriff's office beginning at 8:15 p.m., the Commonwealth's attorney asked "did anybody holler at this man or mistreat him in any way?" and Mr. Anderson answered, "No, sir." (T. 130, 131-132) The petitioner testified that the deputies were not in the room during all of the events subsequent to 8:15 p.m. (T. 168) However, the two deputies testified that they were present from 8:15 p.m. on. (T. 130, 132, 136, 269, 273) The petitioner testified that the sheriff again indicated to him that if he confessed the sheriff would call his father and the petitioner could go home. (T. 167, 178) Deputy Pruitt testified before the jury that he had no knowledge of the petitioner being told that he could go home if he confessed. (T. 279-280) However, Mr. Pruitt did testify that the petitioner wanted to get out on bond and that after the confession the sheriff called the petitioner's father. (T. 278-279)

The petitioner first orally confessed to putting arsenic poisoning in a Diet-Rite Cola in the middle of the day on December 21, 1965 with the intention of killing his entire family in order to collect insurance on their lives. (T. 228-234) After the oral confession was obtained, the sheriff cut on a tape recorder and obtained a taped confession. (T. 110-111, 124) In the middle of the taped confession, the tape

was turned off when the petitioner declined to give a motive. (T. 118, 135) The sheriff testified that while the tape was off he reminded the petitioner that he had previously confessed orally to an intent to kill his family for insurance proceeds, and that the petitioner then continued with the statement and the recorder was turned back on. (T. 118) The taped confession was completed at 8:40 p.m. (T. 96)

The petitioner cited numerous factors as influencing him to confess—that he was cold (T. 156-157, 166), that he was sick (T. 153, 157, 158, 161, 168, 177), that he was afraid of the sheriff (T. 161) and that he had not eaten in two days. (T. 153) Summing up the reason for his confession, the petitioner said that he acted upon the sheriff's statement that if the petitioner confessed "I will let you go home. I will call your daddy and he can come get you tonight." (T. 178)

The trial produced much evidence inconsistent with the confession. All of this evidence came to light subsequent to the time the confession was obtained. For example, the story of the petitioner's wife was that she was sick along with her two children the night before the child's death. The confession specifically corroborated this story. (T. 232) However, an analysis of hair samples taken subsequent to the confession at the initiative of defense counsel (as indicated, T. 326) indicated that the petitioner's wife had not ingested an abnormal dose of arsenic on the night before the child died. (T. 73-75, 326, 327, 328, 329, 353)* The

* The medical testimony was that unusual ingestions of arsenic showed up in the hair. (T. 326) Samples of the hair were clipped as close to the scalp as possible from the heads of the petitioner's wife, the petitioner and a surviving child on or about February 9, 1966 at a time when unusual ingestion of arsenic on December 21, 1965 would have grown out into the samples of hair taken. (T. 326-328) Analysis of these samples showed that the surviving child had unusual deposits in her hair but that the hair of the petitioner's wife and the petitioner contained nothing more than the normal amount of arsenic. (T. 73-75)

medical testimony regarding the normal clinical reactions to a fatal dose of arsenic (T. 81, 338) tended to discredit the story of the petitioner's wife that the child appeared to sleep normally (T. 10) and was able to walk into the doctor's office the next afternoon shortly before he died. (T. 38) The evidence also showed that there were three bottles of Diet-Rite Cola in the refrigerator, and that the other two showed on examination to have been unopened. (T. 287-288) tending to discredit the possibility that the petitioner poisoned one of three drinks and that his family happened to pick that one.

Also tending to be inconsistent with the confession was the testimony by the petitioner's wife that when she opened the Diet-Rite drink, she took no notice of it having been previously opened. (T. 438) Mrs. Satterfield's testimony (T. 1-50, 438) tending to corroborate the confession (and exonerate herself) was contradicted on material matters not only by members of the petitioner's family, (T. 280, 281-284, 288-291, 308, 310, 311-312, 380, 401, 422, 424, 425) and by two friends of the petitioner (T. 257-259, 368, 370-371) but also by Mrs. Mary Wilson (T. 356-358) the mother of five children who were in the Satterfield home the night before the child's death. An example of the evidence tending to discredit the confession was the testimony by members of the petitioner's family that the petitioner's wife stated "Frank's people will think I gave the children rat poisoning" before the medical authorities suspected arsenic poisoning as the cause of death. (T. 283-284, 310, 311-312, 380, 401, 422, 424, 425)

The above summary of the evidence, although lengthy, is not intended to be exhaustive. Additional references to the record will be made in the argument where relevant.

ARGUMENT

I.

The Law Of The Admissibility Of Confessions As Set Forth In Miranda v. Arizona Is Applicable In This Case.

The guidelines set forth in *Miranda* are applicable in this case. *Miranda* came down on June 13, 1966. Seven days later, in the case of *Johnson* v. *New Jersey*, 384 U. S.719 (June 20, 1966) *rehearing denied* 385 U.S. 890 (1966) the Supreme Court held that *Miranda* must be applied in all cases in which the defendant's trial is begun subsequent to June 13, 1966. The petitioner's preliminary hearing was held on June 24, 1966 and his trial was begun on July 29, 1966. (p. 4, *supra*) It follows from the *Johnson* ruling that the requirements set forth in *Miranda* are applicable to this case and unless the procedures required in *Miranda* were proved to have been complied with, the petitioner's statements while in police custody should have been excluded from evidence.

II.

The Confession Should Have Been Ruled Inadmissible Because The Sheriff Created A Situation In Which The Petitioner's Freedom On Bond Depended On A Confession.

Miranda holds that "any evidence that the accused was . . . cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege (against self-incrimination)." 384 U.S. 436, 476. The record in this case is replete with evidence of psychological pressure on the part of the sheriff, but the most serious example of this was the use of the petitioner's desire for freedom on bond as a lever to elicit the confession.

The sheriff denied that he promised bond in exchange for a confession. However, he virtually admitted defense testimony that as a practical matter, he blocked any bonding out

of the petitioner before the confession was obtained, despite his knowledge that the petitioner wanted to be bonded out, and facilitated the petitioner's freedom on bond as soon as he obtained the confession. (p. 16-17, *supra*) The petitioner's father came to the jail prior to the confession with the intent to have his son bonded out. (p. 15-16, *supra*) The sheriff admitted that when the petitioner's father asked him about the possibility of bonding his son out, his reply was that he had plans to take the petitioner to Appomattox the following day for a lie detector test. (p. 16-17, *supra*) Because he did not want to appear to be "acting funny" the petitioner's father dropped his attempt to post bond and went home. (p. 16, *supra*) Immediately after the confession was obtained, the sheriff on his own testimony called the petitioner's father and told him his son wanted to be bonded out. (p. 17, *supra*) This much is established from the actions of the sheriff outside the confines of his office. What went on during the private interrogations is another matter. Here we have only two possible witnesses, the sheriff and the petitioner. Ordinarily, in such a situation the sheriff will always win a "swearing" contest. However, in this case there are added factors. At the preliminary hearing the sheriff was asked "Did you tell him if he made a confession he could get out on bond?" and answered, "I do not know." (p. 15, *supra*) At the trial he denied having given this testimony at the preliminary hearing and denied having promised the petitioner bond. (p. 15, *supra*) However, on the ultimate question whether the prospect of bond was used in some manner as pressure to obtain a confession, there is equivocation to be found in the sheriff's testimony. This came in the following form:

> Q Isn't it a fact that in the preliminary hearing you were asked the same question and you said you didn't know?

> A I don't know what was said. I know I hadn't promised him any bond. The bond had been set. It wasn't up to me to bond him. (p. 15, *supra*.)

Viewed in light of all of the evidence, the above does not appear to be an outright denial of the use of the prospect of bond as a lever to break down the petitioner's resistance. The sheriff unquestionably denied that he promised to personally raise the money for the petitioner's bond. However, this was not the ultimate question. No one had ever suggested that the sheriff had made that sort of promise. It is submitted that the sheriff's equivocation indicated a reluctance to face the real thrust of the question put to him—whether he had in fact dangled in front of the petitioner the hope of freedom on bond in the event of "cooperation." It is submitted that the petitioner's testimony that the sheriff told him that if he confessed "I will call your daddy and he can come get you tonight," (p. 21, *supra*) had in it the ring of truth.

In view of all of the testimony regarding the manipulation of the petitioner's prospects of freedom on bond, the confession should have been ruled inadmissible because this persuasive evidence of cajolery in itself precluded a finding of waiver.

III.

The Confession Should Have Been Ruled Inadmissible Because It Came After The Sheriff Overrode The Petitioner's Attempts To Invoke His Right To Silence And Implied That Silence Was An Indication Of Guilt.

Miranda makes it plain that any attempt by a suspect to invoke his right to silence secures his right not to be questioned further in the absence of counsel. 384 U. S. 436, 473-74, 474-76 Even though a suspect be not sophisticated enough to demand a lawyer, his attempt to remain silent in

the face of incommunicado incarceration amounts to a disinclination to give evidence against himself; if interrogation continues without counsel being secured for the suspect, the implication conveyed to the suspect is that he does not have the right to cut off interrogation. The implication that refusal to answer questions implies guilt strengthens the pressure against further attempts to invoke the right to silence.

In this case, the petitioner's attempts to remain silent in the face of interrogation were met not only with renewed questioning, but with statements calculated to imply to the petitioner that refusal to tell all he knew would imply guilt.

According to the sheriff's own testimony, the petitioner indicated to the sheriff during the first interrogation in the middle of the day that he did not want to be interrogated. (p. 11, 12, *supra*) Nevertheless, the sheriff by his own testimony renewed interrogation in the afternoon beginning at about 6:30 or 7:00 p.m. (p. 12, *supra*) The practice of overriding attempts to invoke the right to silence continued right through the formal taping of the confession. Thus, when the petitioner refused to answer a question on tape, the recorder was turned off while interrogation continued until the petitioner was willing to continue with his statement. (p. 20-21, *supra*) The action of the sheriff in overriding the petitioner's attempts at silence was a clear violation of the procedures set forth in *Miranda* and was sufficient in itself to render the confession inadmissible.

The sheriff's own testimony shows that the sheriff indicated to the petitioner that silence was a de facto admission of guilt. The sheriff testified as follows:

> "Well, he had agreed like I told you to go take the polygraph test or lie detector test to eliminate himself or involve himself, which ever the case may be. And,

> I asked him that night around six o'clock if he still wanted to tell me anything he hadn't told me. And, I advised him if he had anything to hide, it would be my advice to him not to take the lie detector test, because it would bring it out. If he had nothing to hide, then the thing for him to do, it would eliminate him just as well as it would involve him." (T. 243)

Obviously, a man with an Intelligence Quotient of 67 (p. 8, *supra*) would get the impression that a refusal to take the test would be an indication of guilt. The intention of the sheriff was plain. If the defendant was guilty and did not want to reveal this guilt by the refusal to take a lie detector test, he would soon feel trapped in the knowledge that he would eventually be convicted out of his own mouth in any event. This method of police interrogation is an excellent example of the manner in which our rights against self-incrimination can be eroded.

In fact, the petitioner's attempts to invoke his right to silence were used against him in court. When the sheriff was asked on cross-examination before the jury whether he had questioned the petitioner about a particular matter, the sheriff stated "I don't remember whether I asked him about that before. He wouldn't tell me anything. He wouldn't cooperate." (T. 245)

Thus, not only was the attempt to invoke the right to silence overriden and depicted to the petitioner as a sign of guilt, it was used by the sheriff in non-responsive testimony before the jury as an indication of the petitioner's guilt.

It is submitted that police authorities cannot within the Constitution override attempts to invoke the right to silence and then use such attempts as a prima facie indication of guilt, not only to convince a suspect that the burden rests on him to overcome the implication of guilt arising from his attempt to invoke the right to silence, but also to convince

a jury that the subject is, in fact, guilty. It is submitted that the use in this case of attempts to invoke the Fifth Amendment right as a weapon against the full exercise of that right in itself rendered the confession inadmissible.

IV.

The Confession Should Have Been Ruled Inadmissible Because The Petitioner's Constitutional Rights, Particularly His Right To Counsel, Were Not Made Clear To Him Before He Was First Interrogated, Or Even Before He First Confessed.

Miranda states in explicit terms that the constitutional rights of a suspect are not protected unless the suspect is advised of his rights and "knowingly and intelligently" waives them prior to any in-custody interrogation in the absence of counsel. 384 U.S. 436, 475. It is obvious from the record in this case that the petitioner did not understand his right to counsel before he was interrogated, that he remained unaware of that right throughout the interrogation and that he confessed while ignorant of that right.

Even if the Commonwealth's evidence be accepted in its entirety, with all of the inferences possible therefrom, the most that could be said of it would be that the petitioner was finally made aware of his right to counsel after he had confessed and before he repeated his confession for purposes of the tape. In all of the record, there is only one small bit of evidence which says anything at all about the petitioner's reactions to being advised of his right to counsel. This evidence was the reading into the record of the taped statement obtained from the petitioner after he had already confessed orally. (See p. 9, 10, 11, *supra* and Appendix B *infra*) The relevant dialogue on the tape was as follows:

> Q You understand that you have the right to an attorney before you make any statement?

A That's right. I reckon. I don't know about that.

Q Now wait a minute. You have the right to an attorney before you make any statement. You understand that?

A Oh, yes. (p. 10, *supra*)

This evidence, introduced by the Commonwealth, shows on its face that at the outset of the taped statement, the petitioner did not understand his right to counsel. It would be inconceivable that the petitioner would deny understanding of that right in order to lay the groundwork for a later repudiation of the confession. Had this been his intent he would hardly have confessed a few minutes earlier (p. 8, *supra*) nor would he have continued to cooperate with the police by giving his statement on tape. (p. 8, 20-21, *supra*) All of his actions at that point were in total cooperation with the desires of the sheriff.

There is no question but that this statement on tape of ignorance of the right to counsel came after the petitioner had already confessed because the sheriff's own testimony was that the tape was not turned on until after the petitioner's initial oral confession. (p. 8, *supra*) Therefore, the only conclusion possible from the record is that the petitioner remained ignorant of his right to counsel until after he first confessed, if not longer. It follows that during all of the time the petitioner was in custody prior to the first time he confessed, including the times he was being interrogated privately by the sheriff, he was unaware of his right to counsel.

The above was sufficient in itself to render the confession inadmissible. *Miranda* states that a suspect must be "clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during the inter-

rogation." 384 U. S. 436, 471. Lest there be any doubt about the necessity for police to reasonably satisfy themselves that a suspect understands the warnings given him, the Court stated the following:

> If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the Government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. 384 U. S. 436, 475

The petitioner could not have "knowingly and intelligently" waived his right to counsel before interrogation, or even before he first confessed, because he did not at those times understand his right to counsel, as proved by his statements made subsequent to the initial confession.

Even if the petitioner did not now have access to the prosecution evidence of the statement by him of ignorance of the right to counsel, the confession would have been legally inadmissible, because the Commonwealth totally failed to prove, or even to offer evidence tending to prove, that the petitioner understand his right to counsel or any of his constitutional rights prior to interrogation or even prior to the initial confession.

Nowhere in the record is there any evidence whatever tending to prove explicitly or implicitly that the petitioner understood any of his constitutional rights before he had finished his initial confession. In the total absence of any such evidence, the Commonwealth obviously did not bear its "heavy" burden of proving that the confession was pursuant to a knowing and intelligent waiver of rights.

This total lack of affirmative evidence of intelligent waiver was hardly an oversight. After the evidence on ad-

missibility was presented to the court, counsel for the defense stated unequivocally in argument that one of its reasons for objecting to the admissibility of the confession was the failure of proof of intelligent waiver prior to interrogation. This argument by counsel for the defense was as follows:

> Now that is the heart of the reason that this confession is admissible. It (*Miranda*) says the government has a heavy burden to demonstrate that the defendant knowingly and intelligently waived his privileges against self-incrimination . . . . and, it says that this Court has always set high standards of proof for the waiver of constitutional rights, and we reassert these standards as applied to in-custody interrogation. In other words, that means they put him in here in this Sheriff's room. This man is looking at all those scary pictures of all these people on the wall, and they got him in there. And, they are responsible for having him there. It says since they are responsible for that for establishing the isolated circumstances as applied in custody, the isolated circumstances under which the interrogation takes place and have the only means of making available corroborating evidence of warnings given to his incommunicado. The burden is right on the Sheriff, and they had the opportunity when they had him there at twelve-thirty to get a tape recorder on at that time. It's not any harder to cut it on at twelve-thirty than it is to cut it on at eight o'clock after you have had him all primed and ready to talk. They could have cut it on at twelve-thirty. They could have made it clear on that tape that he understood his right to counsel. But it wasn't done. An expressed statement that the individual is willing to make a statement and does not want an attorney. This man never said I don't want an attorney or lawyer. Followed closely by a statement could constitute a waiver, but a valid waiver will

> not be presumed simply from the silence of the accused after warnings are given.
>
> * * *
>
> Now we are talking about what happened at twelve o'clock. The record must show that an accused was offered counsel but intelligently and understandingly rejected the offer. (T. 205-207)

Subsequent to this defense before the court, all of the Commonwealth witnesses who had testified in the absence of the jury testified again in the presence of the jury and still no evidence whatever was offered to show that the petitioner knowingly and intelligently waived his rights prior to interrogation or even prior to the initial confession. It can hardly be argued that this total lack of evidence on this crucial point was a mere technical omission. This total lack of evidence where *Miranda* requires the bearing of a "heavy" burden of proof was sufficient in itself to render the confession inadmissible.

It might be argued that the petitioner's action in sending for the sheriff just prior to his initial confession (p. 8, 20, *supra*) had the earmarks of waiver. However, *Miranda* makes it plain that any waiver must be proved to have been a knowing and intelligent one. *Ibid.*

Counsel for petitioner does not contend that law enforcement officials must act as psychiatrists to fathom the private mind of a suspect who states unequivocally that he understands his rights but later testifies in court that in fact he did not. Obviously, the authorities must use objective tests to determine whether a suspect understands his rights. However, in this case, the only evidence produced by the Commonwealth to indicate the petitioner's reactions upon being advised of his rights plainly showed that the petitioner had been unaware of his right to counsel prior to his initial

confession. No evidence was produced to show that the authorities satisfied themselves prior to the initial confession that the petitioner understood any of his constitutional rights. (p. 11, *supra* and Appendix B, *infra*)

Indeed, the evidence indicates that even after the petitioner had already confessed, the authorities made no real common-sense attempt to make clear to him his right to counsel. Had the sheriff been interested in effectively communicating to the petitioner his right to counsel, he would have explained in detail to the petitioner the meaning of that right. When the petitioner indicated his ignorance of the right to counsel, the sheriff would have restated that right in words other than those the petitioner had just indicated he did not understand. But the sheriff simply repeated again the same words "you have a right to an attorney before you make any statements." At the trial the sheriff was asked about this and had no explanation. He testified as follows:

> Q . . . Now it's a fact that when you went back and repeated it, you didn't change it a bit. You just said the same words?
>
> A I said the same words. I said "You understand that?" He said, "Oh, yes."
>
> Q Now, Mr. Coates, when somebody doesn't understand something, isn't it usual to say, "in other words" and explain to them what it means?
>
> A Well, I repeated the same thing to him, and he said he understood it.
>
> Q You repeated the same thing and he said, "yes," so you are assuming he understood that?
>
> A Uh-huh. (T. 112-113)

The more logical assumption would have been that the petitioner, having already confessed, had no reason to deny

the sheriff the answer he obviously wanted. However, the sheriff appeared more interested in getting a confession which would stand up in court than in informing the petitioner of what the word "attorney" meant. In order to have the confession ruled inadmissible, it was not necessary for the defense to prove that the petitioner remained unaware of his right to counsel even after he said "oh, yes" on the tape, (since in any event the petitioner was proved not to have understood his right prior to that time) but this would be the most reasonable interpretation of the evidence.

Indeed, the evidence on balance tends to uphold the petitioner's testimony (p. 10, *supra*) that he was never advised of any of his constitutional rights prior to the time of the taped confession. This is indicated by the fact that when the petitioner stated on tape that he did not understand his right to counsel, the sheriff made no mention of having told the petitioner previously of his right to counsel. In addition, the very fact that the petitioner indicated on tape that he did not understand his right to counsel is consistent with his testimony that this was the first time he had been advised of that right. This testimony was controverted by the sheriff. (p. 10, *supra*) However, the sheriff's testimony was not corroborated by anyone, not even the two deputies who testified (p. 20, *supra*) that they were present just before the initial oral confession. The sheriff had within his power the means to lay at rest any possible future controversy over what went on in the jail. He could have taped all of the interrogations, but he did not. When asked about this at the trial, the sheriff stated, "there is nothing to tape. Just tell him of his rights, when you are ready to incriminate, tell him again." (T. 109)

Because law enforcement authorities have the only means

of corroborating their version of in-custody interrogations in the absence of counsel, *Miranda* places upon the Commonwealth a "heavy" burden of proving that warnings were effectively given, understood by the suspect, and knowingly and intelligently waived by him. 384 U. S. 436, 475

It is submitted that the Commonwealth did not even bear its burden of proving that the petitioner was warned of any of his constitutional rights before the confession was first obtained. However, even if the above argument be rejected, and even if it be held that the petitioner was made aware of his right to counsel during the taped statements, nevertheless, the only evidence available in the record is that the petitioner was not made aware of his right to counsel prior to his initial confession. Therefore even if the evidence is viewed in the light most favorable to the Commonwealth, the Commonwealth's evidence itself proves that the petitioner's rights as set forth in *Miranda* were not protected. This proof, and the total lack of evidence tending to affirmatively prove a knowing and intelligent waiver were independently sufficient grounds for exclusion of the confession from evidence.

V.

The Confession Should Have Been Ruled Inadmissible Because The Petitioner Was Never Informed Of His Right To Court-Appointed Counsel.

Miranda requires that before a defendant's statements while in custody can be held admissible in court, it must be proved that the defendant was warned of his right to court-appointed counsel if there is any doubt at all about his ability to retain counsel. 384 U. S. 436, 473

At the time of his arrest the petitioner had a menial job in

a textile mill in Halifax County. (p. 9, *supra*) His counsel was later retained not by the petitioner but by a brother-in-law. (T. 188)

The record shows that the petitioner was not warned of his right to court-appointed counsel. (p. 10-11, *supra*) It is submitted that therefore the confession should have been ruled inadmissible.

VI.

The Confession Should Have Been Ruled Inadmissible Because The Totality Of Circumstances Surrounding The Confession Precluded Any Finding That The Petitioner Waived His Fifth Or Sixth Amendment Rights.

Miranda makes it clear that no waiver of constitutional rights can be found unless the total circumstances surrounding the confession indicate that the defendant voluntarily and without pressure of any kind waived his right to silence or to have an attorney present before making any statement. *Miranda* states the following:

> "(A)ny evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege. The requirements of warnings and waiver of rights is a fundamental with respect to the Fifth Amendment privileges and not simply a preliminary ritual to existing methods of interrogation. 384 U.S. 436, 476

A casual reading of the facts in this case shows that even if it had been proven at the trial that the petitioner was advised of all of his constitutional rights and made to understand them, and even if the promise of freedom on bond and the overriding of attempts to invoke the right to

silence were not enough in themselves to render the confession inadmissible, the totality of the circumstances surrounding the obtaining of the confession rendered the admission of the confession into evidence a violation of the petitioner's Constitutional rights as set forth in *Miranda*. The record is replete with evidence of "existing methods of interrogation" detailed and criticized in *Miranda*. A short summary of those elements of pressure not already discussed in argument follows:

(1) The sheriff cursed the petitioner and otherwise verbally abused him during both private interrogations. (p. 14, 19, *supra*)

(2) Alternating with the sheriff's "Mutt" demeanor—curses and verbal abuse—was conduct calculated to encourage the petitioner to confide in the sheriff. The petitioner was told that the sheriff was a friend of his family (p. 17, *supra*) which tended to obscure the fact that the sheriff's intentions were not necessarily in the interests of the petitioner's ultimate welfare. The sheriff's complete physical control over the petitioner was underscored by alternately bringing him into a warm room (p. 18, *supra*) and sending him back to a solitary confinement cell without mattress, blankets or sheets. (p. 17, 18, *supra*) The obvious implication was that the prisoner who "cooperated" with the sheriff would be treated in a nicer manner than one who did not.

(3) The evidence indicates that the confession was at least partly untrue, indicating that it was not a free and voluntary pouring out of details, but a confession obtained through a conscious or unconscious process of pressure and suggestion.

Counsel for petitioner admits that the ultimate question of guilt is a matter for the jury and that therefore those facts inconsistent with the confession are not relevant on appeal in this case on the question of guilt. However, guilt aside, there are compelling indications in the record that the confession was not factually correct, which is proof again that the confession was not obtained pursuant to a voluntary waiver of rights.

Aside from the evidence already mentioned (p. 21, 22, *supra*) which tended to discredit the confession, there is one fascinating bit of evidence in the record which almost certainly proves that the confession was incorrect as to one important detail. The petitioner confessed to putting poison in a Diet-Rite Cola with the intention of killing his entire family for insurance proceeds. (p. 20, *supra*) However, the petitioner's wife testified that the Satterfield refrigerator contained Diet-Rite drinks and Pepsi-Colas and that the Diet-Rite drinks were intended for her so that she could lose weight. (T. 16) Thus, if the petitioner was guilty he obviously did not intend to kill his whole family but only his wife. It is significant that the sheriff felt it necessary to turn off the tape recorder at one point because the petitioner declined to give a motive for attempting to kill his entire family. (p. 20, 21, *supra*)

Again, this important error in the substance of the confession would have no bearing on the petitioner's ultimate guilt. Nevertheless, if the confession is erroneous as to this detail, then why is it erroneous?

It is significant that all of the essential details of the confession were subject to prior police deduction. The sheriff knew that the petitioner was the beneficiary of insurance on members of his family. (p. 13, *supra*) He had access

to the version of facts given by the petitioner's wife, whose story at the trial was that she and her children were sick after eating pinto beans and Ritz crackers and drinking a Diet-Rite Cola. (p. 13, *supra*) The petitioner eliminated the pinto beans in the middle of the day. (p. 14, *supra*) Apparently, the petitioner admitted by the end of the second interrogation that he had bought a bottle of liquid poison (p. 19, *supra*) which would eliminate the Ritz crackers, leaving only the Diet-Rite Cola. If the petitioner were guilty and his wife innocent, he would have had to put the poison in the Diet-Rite Cola sometime before the evening of December 21, 1965, the night the petitioner's wife testified she and her children were sick.

On the other hand, those facts detailed in the statement of facts which were inconsistent with the confession apparently did not come to light until after the confession was obtained. (p. 21-22, *supra*) In view of all of the record, it is submitted that the confession was at least partly the result of a conscious or unconscious process of suggestion. To be sure, the sheriff denied this, ("Wasn't anything suggested to him in any way—T. 247) but he was unable to document this testimony because he repeatedly testified that he could not remember the essential details of what went on in the sheriff's office before the confession was obtained. (p. 12-13, *supra*)

All of the methods of police interrogation outlined above and elsewhere in argument might have been unavailing against a man of normal intelligence, wise to the usual methods of police interrogations. However, the petitioner was not equipped on January 16, 1966 with the will of a normal man. Aside from his lack of normal intelligence (p. 8-9, *supra*) the petitioner on that day was cold and sick and had not been able to retain food in his stomach for two days. (p.

14, 15, 21, *supra*) It is submitted that the totality of the circumstances surrounding the obtaining of the confession are inconsistent with any voluntary waiver of constitutional rights required by *Miranda* before a confession can be admitted into evidence. The evidence of the petitioner's weakness of will and the sheriff's uses by various means of pressure to obtain a confession showed a violation of spirit as well as in letter of the requirements of *Miranda*. It is submitted that admission of the confession into evidence was error and that the Supreme Court of Appeals of Virginia should have reversed the conviction and ordered a new trial.

CONCLUSION

The spirit and heart of *Miranda* is the requirement of proof of intelligent and voluntary waiver of Fifth and Sixth Amendment rights prior to interrogation. Without such a requirement, *Miranda* would have been a set of empty rules. The thrust of this petition is upon the lack of any intelligent and voluntary waiver. The sheriff of Halifax County, Virginia observed much of the form required in *Miranda*, but manifestly violated *Miranda's* substance. It is submitted that the ruling of the Circuit Court of Halifax County and the Supreme Court of Appeals of Virginia fell short of a full enforcement of Fifth and Sixth Amendment rights as set forth in *Miranda*. It is submitted that this failure to give *Miranda* its full import is particularly dangerous to the future exercise of Fifth and Sixth Amendment rights in the Commonwealth of Virginia, because on the facts of this case, affirmance of the conviction of the petitioner can only be interpreted as restricting the meaning of *Miranda* to its form absent the requirement of proof of waiver. Were *Miranda* to have that meaning, then a disparity between those rights accorded the intelligent and the powerful on

the one hand and the ignorant and the poor on the other hand would be written into the jurisprudence of Virginia. It is submitted that the Supreme Court of Appeals of Virginia erred in not reversing the conviction of the petitioner as inconsistent with Fifth and Sixth Amendment rights and in not granting a new trial.

Wherefore, your petitioner respectfully prays that the final judgment of the Supreme Court of Appeals of Virginia upholding the conviction of your petitioner be reversed and the case remanded to that court with directions to remand to the Circuit Court of Halifax County for a new trial.

Respectfully submitted,

WALLACE FRANKLIN SATTERFIELD

By: HENRY W. McLAUGHLIN, JR.
Counsel

McLAUGHLIN AND McLAUGHLIN
Courthouse Square
Halifax, Virginia

APPENDIX B

One point of significance in the Record is the fact that all of the evidence regarding the petitioner's reactions to warnings of his constitutional rights related to what the petitioner said on tape, after he had already orally confessed. It is evident in a quick reading of the Record that these are the facts; however, in the questioning of the sheriff by the Commonwealth's attorney, the sheriff was simply asked what warnings of constitutional rights were given the petitioner (T. 94-95) and the sheriff read into the record what was said on tape, (T. 95) including the petitioner's statement that he did not understand his right to counsel. This same part of the taped statement was read several times by the sheriff, including each time he was asked in any detail about what warnings of constitutional rights were given the petitioner. (T. 95, 111-112, 228-229) It is obvious from reading this testimony that the sheriff was reading from the taped statement obtained after the petitioner had already confessed. He certainly could not have been quoting verbatim from memory the dialogue between himself and the petitioner before the petitioner confessed orally. Nevertheless, since the point is an important one, it is worthwhile to prove absolutely from the record that all of the testimony regarding the petitioner's reactions to warnings of his constitutional rights related to his reactions on tape after he had already confessed. This absolute proof requires a detailed analysis of the record.

The following was admitted by Commonwealth witnesses: (1) The written confession signed by the petitioner was transcribed from the taped statement (T. 131, 227); (2) This statement was read in its entirety into evidence by the sheriff directly from the transcription (T. 227-234); (3) At other points in the trial, the sheriff read portions of this

complete statement into the record. (T. 95, 96, 111-112; 117-118) (4) All of the portions of the statement read at various times into the record can be found word for word in the entire statement read into the evidence at T. 227-234, (including all of the evidence regarding the petitioner's reactions to being advised of his constitutional rights, T. 95, 111-112, 228-229) Therefore, all of the evidence regarding the petitioner's reactions to being advised to his constitutional rights derived directly from what was recorded on tape. Since the sheriff admitted that the tape recorder was not turned on until after the petitioner had already confessed orally (T. 110-111, 124) it follows that all of the evidence describing the petitioner's reactions to warnings of his constitutional rights derived directly from what was said after the petitioner had already orally confessed. There was no evidence of any reaction by the petitioner to warnings of his rights before he first confessed.

APPENDIX C

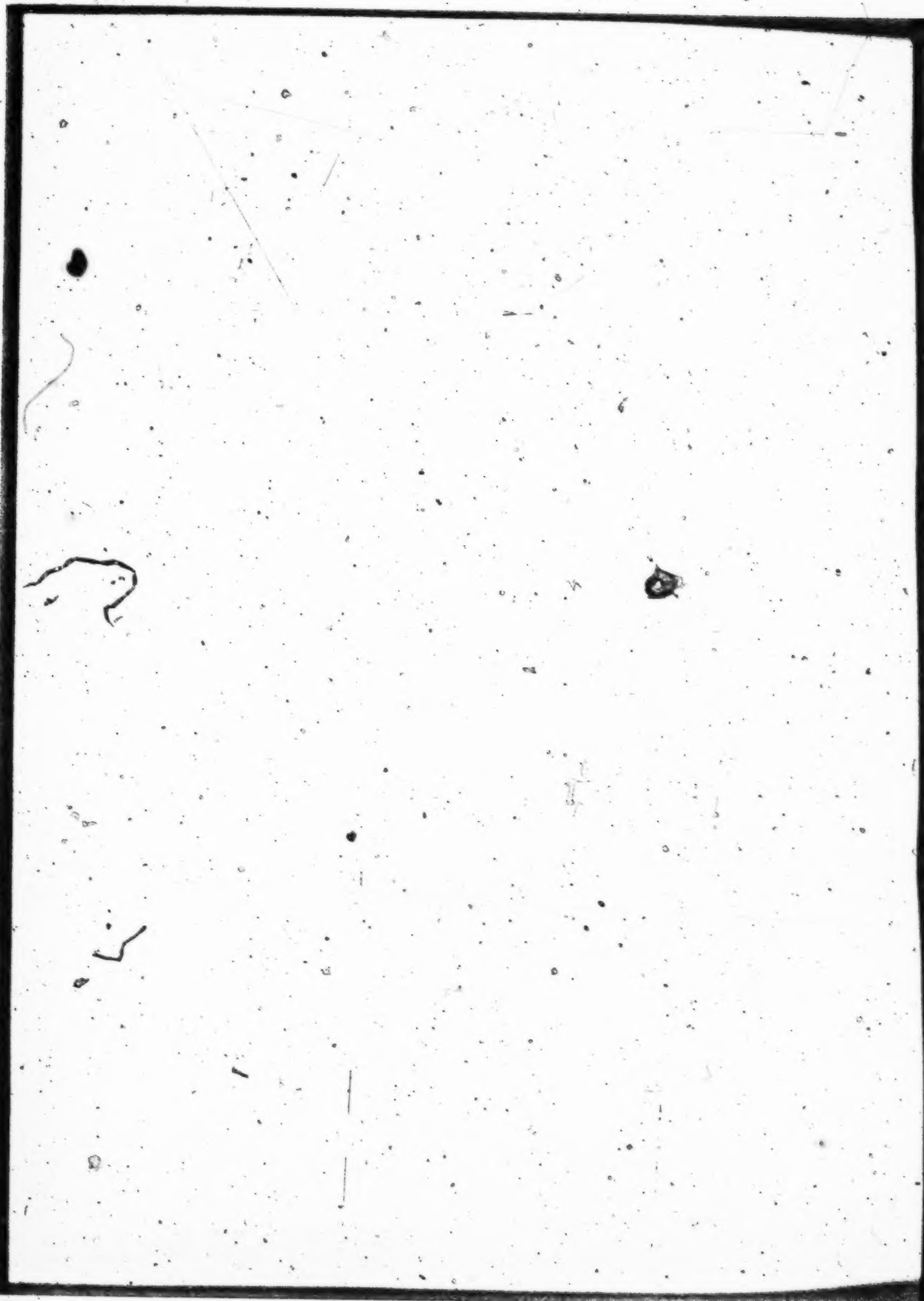
The following is the final order by the Supreme Court of Appeals of Virginia upholding the conviction of the petitioner in the Circuit Court of Halifax County, Virginia:

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 7th day of March, 1967.

The petition of Wallace Franklin Satterfield for a writ of error and supersedeas to a judgment rendered by the Circuit Court of Halifax County on the 10th day of October, 1966, in a prosecution by the Commonwealth against the said petitioner for a felony, having been maturely con-

sidered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said circuit court. (R. 57)



FILED
JUN 2 1967
JOHN F. DAVIS, CLERK

Supreme Court of the United States

No. ~~1-448~~ 216

1967

WALLACE FRANKLIN SATTERFIELD,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

Appendix A to Petition for Certiorari, Containing Portions of The Record Showing Fifth and Sixth Amendment Federal Questions Were Properly Raised in the Lower Courts

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HENRY W. MCLAUGHLIN, JR.
McLaughlin and McLaughlin
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Supreme Court of the United States

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Appendix A to Petition for Certiorari, Containing Portions of The Record Showing Fifth and Sixth Amendment Federal Questions Were Properly Raised in the Lower Courts

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(This appendix is presented pursuant to Rule 23(f) of The Rules of The Supreme Court of the United States.)

*In the Circuit Court of Halifax County, prior to the admission of the confession into evidence in this case, the following motion was made in Chambers by counsel for the petitioner:**

[TR. P. 83]†

MR. MCLAUGHLIN, JR.: Judge, we want to make this motion. Any evidence that Mr. Coates may have in regard to a confession be declared inadmissible.

During the discussion that followed, the following agreement was reached:

[TR. PP. 84-85]

THE COURT: All right. Let's see, do we have enough evidence to rule on it?

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* The short notes explaining the context of the portions of the record contained in this appendix are set out in italics.

† References to the transcript are designated by "TR." followed by the appropriate page number.

MR. MCLAUGHLIN, III: No, sir. I'm afraid we are going to have to have some evidence on it.

THE COURT: The sheriff has got to testify as to the voluntariness and if the man knew what he was doing and everything of that kind.

MR. MCLAUGHLIN, JR.: We want to have that done in the absence of the jury.

* * *

THE COURT: What time is he going to introduce it? Is it anything we can pass on now in regard to it?

MR. GREER: I don't think so. We have to put the Sheriff on as a witness that he got into this investigation, when he got into it, and I'm going to ask him if this statement was given him by the defendant and his answer will be yes. At that time, I am sure the defense will ask that the jury be excused.

THE COURT: I mean we ought to excuse the jury before we get into it at all, because it does mention the fact that maybe there is a confession in existence and the jury wouldn't understand our excluding it.

* * *

MR. GREER: But, if it's wrong to even ask him about the statement, I won't do that. I will just put him on and ask him who he is, and I will ask him if he investigated this alleged offense, and if he says yes, I will stop and then you can send the jury out.

THE COURT: And, we will get it cleared up.

The record showed that the following transpired after the matters taken up in Chambers were concluded:

NOTE: The jury was polled and Court is again in session at 2:06 P.M.

[TR. PP. 90-91]

MR. MCLAUGHLIN, JR.: At the time, if Your Honor please, I would like to make a motion either in Chambers or in the absence of the jury that his testimony be heard by the Court first as to the admissibility of evidence, sir.

THE COURT: All right, sir.

MR. GREER: I was going to do that, but I still want to get his name and whether he investigated this alleged offense.

THE COURT: All right.

C. T. Coates

introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. GREER:

Q. Will you state your name and occupation?

A. C. T. Coates, Sheriff of Halifax County.

Q. Sheriff, did you investigate this alleged offense which we are trying today?

A. I did.

THE COURT: Ladies and gentlemen, will you retire to your jury room please.

NOTE: The jury left the courtroom to retire to their jury room.

While the jury was out the Court heard evidence on the admissibility of the confession, which evidence is set forth below in its entirety.

[TR. PP. 91-192]

BY MR. GREER: (Continuing)

Q Sheriff, when were you called into this investigation?

A On the night of January the 18th.

Q And, that was a result of information concerning the cause of death of this Jeffrey Brenner?

A Yes, the Doctor Wooding called me and told me the child had died of arsenic poisoning, and he thought it should be some investigation made of it. I told him it was the first knowledge I had of it, and I would get on it the next morning which I did.

Q All right, sir. Now, the next morning, that was January the 19th, did you start your investigation then?

A Yes, sir.

Q And, who did you interview first?

A I went to Turbeville and contacted Mrs. Satterfield, Franklin's—Franklin Satterfield's wife.

Q Now, they had moved since December to Turbeville?

A That's right.

Q And you talked to Mrs. Satterfield about the case?

A Yes, sir. I brought her over to the office and talked with her.

Q All right, sir. When was the defendant arrested?

A He was placed in jail at 12:40 the same day.

Q And, did you have to go out and apprehend him? What were the circumstances?

A No. We had his wife over here. He came down, because I was over at your office when he arrived and when I got back to my office, he was there, or had been there. I think he was there at the time.

Q And, was he questioned at that time?

A Yes, sir.

Q And, was he informed of his constitutional rights at that time?

A He was.

Q Did he make a statement to you at that time?

A Not at that time.

Q All right, sir. Was it then that he was lodged in jail?

A Just a little while after that, that's right.

Q He hadn't been charged when you questioned him the first time had he?

A No.

Q Then he was lodged in jail at 12:40, I believe you said?

A Uh-huh.

Q And, did you talk to him anymore that day?

A I talked to him around six-thirty to seven o'clock.

Q And, did he make a statement to you at that time?

A No, sir.

Q During both of these sessions with him, before 12:40 and around six-thirty, did he deny any knowledge of the—did he make any denial at all?

A He did deny it, but he gave me information enough that at the end of the first interview to secure a warrant for him.

Q I see, sir. All right, sir. Did you see him anymore that day?

A Yes, sir. When I finished talking to him about six-thirty to seven, we had engagements the next morning. He was going with me to Appomattox to take a polygraph test.

Q He had agreed to take a lie detector test?

A Yes. And. I told him that anything else he wanted to tell me that night to get one of the deputies or the jailer to call me, that I was going on home. I went on home. About fifteen or twenty minutes after I arrived at home, the telephone rang and wanted me back over here. I came back.

Q Why did you come back? Who wanted you over here?

A Satterfield. They told me that Satterfield wanted to talk to me.

Q All right.

A And I came back over here and took him out of the cell, carried him up to my office with two of the deputies and sat down, and he gave me the statement.

Q Did you advise him of his constitutional rights?

A I did.

Q What did you advise him?

A I told him who I was, and I told him, I said, "You understand, Frank, you don't have to make any statement if you don't want to. You understand that? Yes. You understand that any statement you make can be used against you in court? You understand that? Yes. You understand that you have a right to an attorney before you made a statement. Do you understand that? That's right. I reckon I do. I don't know about it. Now, wait a minute. You have a right to an attorney before you make any statement. You understand that? Oh, yes. All right, now. Nobody has promised you anything? No. Nobody has promised you any favors of any kind or made any threats towards you? No. Are you making this statement of your own free will? Yes." And, then I went on with the statement.

Q All right, sir. Who was present when that statement was given?

A Deputy Sheriff Monroe Anderson and Roy Pruitt.

Q What time did you start taking the statement?

A It was eight-fifteen.

Q What time did you stop?

A Eight-forty.

Q Was Officer Pruitt and Monroe Anderson present the entire time the statement was given?

A Yes.

Q Were they in uniform?

A Yes.

Q Were you in uniform?

A No, sir.

Q Do you wear a uniform?

A No, sir.

Q How did you conclude the statement?

A "Now, Frank, who is in here listening to you while you make this statement besides myself? Roy Pruitt, and I don't know him. Roy Pruitt and Monroe Anderson. Both of them are Deputy Sheriffs. Both of them have on uniforms. Correct? That's right. All right, and you have given this statement of your own free will and accord? That's right." And, that's the end of it.

Q At the time the statement was given, had the defendant had supper?

A Yes, sir.

Q Do you know what kind of accommodations he had in his cell?

A I don't know right off. Before they go to bed at night, they have a mattress, two sheets, a pillow, pillow case, and a blanket.

Q They are not in the cells all day long?

A No. When the cell is empty, we take those things out. We don't put them back until somebody comes to occupy that cell.

Q Now, if I understood you correctly, you said that you told the defendant when you left over here that night that you were going home, and if he decided he wanted to talk to you, give you a statement, to call you and you would come back?

A To get the deputy or the jailer to call me, and I would come back.

Q All right, sir. Do you recall who called you to come back?

A I asked them about that, and Pruitt was, fairly sure it was he that put the call in for me.

Q Did you have the defendant sign the statement?

A Yes.

Q And, was it, he signed it in the presence of whom?

A Monroe Anderson and Roy Pruitt.

Q Did you see him sign it?

A Yes.

MR. GREER: He's with you.

CROSS EXAMINATION

BY MR. MCLAUGHLIN, III:

Q Sheriff Coates, did you tell the defendant, Mr. Satterfield, that if he confessed he could get bond?

A I never mentioned a bond. A bond had been set before that happened.

Q I would like to get a direct answer to the question.

A No, I didn't tell him that.

Q Isn't it a fact that in the preliminary hearing, you were asked the same question and you said you didn't know?

A I don't know what was said. I know I hadn't promised him any bond. The bond had been set. It wasn't up to me to bond him.

Q That's not the question. Now, you said that you did not tell him he could get bond if he confessed?

A No, sir.

Q Now, you were in the preliminary hearing, and you took your oath and testified in the preliminary hearing, didn't you?

A That's right.

Q Now, just a second and let me find it. (Mr. McLaughlin, III is looking through the transcript of the preliminary hearing.) The date of the preliminary hearing before Judge Waller is the 24th day of June, this year. Is that right?

A I guess. I didn't keep up with it.

Q Excuse me just a second. Let me find something here. Isn't it a fact that in the preliminary hearing, the following question was asked you? "Question, did you tell him if he made a confession he could get out on bond? Answer, I do not know."

A I didn't say that.

Q Now, if Mrs. Abbott, who is the court-reporter, comes and testifies that you—are you sure you didn't

say it? I thought you said a minute ago you weren't sure what she said?

A No, I didn't say that.

Q You didn't say that?

A No.

Q Now, I want to put a little more context with the questions. All right. Let's start at the first of the cross. Now, I'm going into where this part is. The question was, had you told Frank Satterfield that you were a good friend of his uncle, Ed Satterfield, who worked as deputy sheriff for you in years past and a good friend of Mr. Thomas Bass and a good friend of his family during the time you questioned Frank. Do you remember that question?

A That's the question you asked me here in the preliminary hearing.

Q Right. Wasn't it your answer.

A Wait a minute. I didn't tell Frank that. I told you that here in court. You asked me a question.

Q You say you did not tell Frank you were a friend of his family?

A I said it in the courtroom. He was here.

Q You said what?

A You asked me the question if I was a friend of Mr. Satterfield, Mr. Tuttle and Mr. Bass, and I told you I was.

Q Well, now, that's right. Do you deny that you also told Frank Satterfield that you, in fact, that you in jail told Frank Satterfield that you were a friend of his uncle?

A I don't recall it.

Q You don't recall?

A No.

Q Now, don't you remember that during the preliminary hearing, you were asked that question? I have not got to it yet. You were asked whether or not you told Frank Satterfield in the jail that you were a friend of his uncle and a friend of Thomas Bass and a good friend of his family, and you stated yes?

A I don't remember it.

Q Well, now, let me go back. I don't want to try to trick you. You said you don't remember whether you said it to have told him that or not?

A I don't recall telling him that.

Q You don't remember whether or not you said in the preliminary hearing that you did?

A I don't know.

Q But you might have?

A I don't know.

Q Well, let me read it to you. "Question: Had you told Frank Satterfield that you were a good friend of his uncle, Ed Satterfield, who worked as a deputy sheriff for you in years past, and a good friend of Mr. Thomas Bass and a good friend of his family during the time you questioned Frank? Answer: I do not know whether I told him or not. He knew that. Question: Is that true? Answer: It's true I am a friend of theirs. Question: Did you not tell him that on the night of January 19th around something after eight o'clock or did you tell him before? Answer: I do not know when I told him. Question: But, you did tell him? Answer: Yes."

Now, does that refresh your memory? Does that sound like what you said?

A I told what you just said there a while ago. He already knew we were friends.

Q Now, in this preliminary hearing, isn't it a fact that when pursued on this question, you admitted that you did tell him that?

A I don't know.

Q But, you wouldn't deny it?

A I just don't know.

Q The next question was, "Did you tell him that if he made a confession he could get out on bond? Answer: I do not know."

A I didn't say that.

Q Now, if Mrs. Abbott testifies having taken down each word, she took this answer down, would you say that she was mistaken?

A I certainly would.

Q Now, isn't it a fact that immediately after Frank Satterfield confessed and made a statement that you called his father and told him he could come get him?

A He asked me to call his father, and I did.

Q Didn't you tell Mr. Bedford Satterfield "the boy's confessed; you can come and get him"?

A I told—I called Mr. Bedford Satterfield for Frank. Now, what he wanted, he wanted bond. I told him he could get—well, he knew he could get bond. He had been knowing it ever since . . .

Q Wait a minute, Mr. Coates. Let's substantiate that. I want you to answer the question if you will. We will get to the fact of whether he knew he could get bond, but didn't you call immediately after Frank Satterfield confessed, made his statement, didn't you in fact call his father and say, "The boy has confessed. You can come get him."

A No. I told him he had confessed, and the boy wanted him to come down there.

Q Now, isn't it a fact that Mr. Bedford Satterfield came here the afternoon before Frank Satterfield made the statement?

A That's right.

Q Came here and asked you something about the bond the same afternoon that you arrested him before the statement was made? Didn't Bedford Satterfield come here this afternoon and ask you about the bond?

A He asked me what the bond was, and the Commonwealth attorney said the bond was ten thousand dollars ($10,000.00), and that's what I told him.

Q Well, now isn't it a fact when he came here and asked you about the bond that you said, "Bed, I'd rather you leave him here overnight. I got a polygraph test in the morning."

A I told him that we were going to take him the next day for a polygraph test.

Q I know. But, didn't you express a desire that he leave him there?

A I don't recall that.

Q You don't recall whether you did or not?

A I told him we were going to take him for a polygraph test the next day.

Q Now, if Mr. Satterfield testifies that you told him, you said, "Bed, I'd rather you didn't take him. I'd rather you left him here overnight so I can take him for a polygraph tomorrow." Would you deny that?

A I don't remember saying it.

Q Now, as soon as—after he confessed, some people came over here to go his bond?

A I don't think so. I went on home, and I don't think they came that night. They might have.

Q Didn't Lewis Tuttle call you and come over to the sheriff's office?

A That same night?

Q After the confession?

A He called me a time or two. I don't remember if it was that same night or not.

Q You wouldn't deny that?

A He called me, but I don't know whether it was that night or not.

Q All right. Now, I want to go over this one more time. As I understand it, you deny having promised that "if you confess, you can get out on bond". You deny that?

A I absolutely did not.

Q And, you deny having expressed doubt as to whether or not you done this in the preliminary hearing? You deny that you expressed doubt about whether or not you had done this at the preliminary hearing?

A I don't know anything about that. I have never told him if he confessed he could get bond.

Q I'm asking you about the preliminary hearing now. I want to get this absolutely straight. Mrs. Abbott has got it down here, and I want to know?

A Well, I didn't say that. No, I've never told him that.

Q Now, let's go into this advisement of his constitutional rights. You testified at the preliminary hearing that you told him of his preliminary rights three different times. Is that correct?

A I don't know what I said at the preliminary hearing. I advised him of his rights.

Q Do you mean to say that you don't remember what you said to him?

A I advised him of his rights every time I talked with him.

Q Excuse me. Do you remember what was said at the preliminary hearing?

A I don't remember.

Q You just don't remember? The preliminary hearing was on the 24th of June. Is that correct?

A I have repeated, I advised him of his rights every time I've talked to him.

Q You are going to get a chance to say that, but I want to nail down this thing about your memory.

A I don't know what you've got down there. You've got something I didn't say.

Q I'm asking you what you remember. You say you can't remember things you said at the preliminary hearing.

A I didn't say that. I said I didn't say that.

Q We've gotten off that now, and I've begun to ask you something else. Do you remember what went on, what you testified to at the preliminary hearing?

A I remember a substance of what I said.

Q A substance?

A Yes.

Q And, do you remember having testified at the preliminary hearing that you told him of his rights three times that day?

A I don't know what I said at the preliminary hearing on that question.

Q You don't?

MR. GREER: Your Honor, I think he ought to read the question to him and establish some foundation so that the sheriff can answer the question and know what he's talking about.

THE COURT: You have to lay a foundation and give him an opportunity to refresh his memory.

MR. MCLAUGHLIN, III: Yes, sir.

THE COURT: Well, I don't think whether he advised him one time or three times makes any real difference.

MR. MCLAUGHLIN, III: Well, sir, we are trying to lay some foundation for it.

BY MR. MCLAUGHLIN, III (Continuing)

Q What I'm talking about, is you are being questioned as to why the tape recorder wasn't put on when Frank Satterfield first came in, and the question was, "Have you been in the practice of putting these things down on tape recorder?" And, you said, "For fifteen years." You tell a man of his rights and later on when you get the confession, you put it on tape?

A That is right.

Q But, you don't tape it when you first tell him of his rights?

A There is nothing to tape. Just tell him of his rights, when you are ready to incriminate, tell him again.

Q You did feel it necessary first to tell him of his rights?

A That's the law.

Q You make sure you are protected by making a tape of it?

A I do not think I have to go through lengths of proving myself, of telling the truth on the witness stand.

Q "I told him of his rights three different times that day", and now, this is a small bit, but I want to get it. Is that correct?

A That's right.

Q Now, tell me what those three different times were?

A When he first came into the office, at six-thirty that night and eight-fifteen that night.

Q Now, you say at six-thirty you advised him of his rights?

A Six-thirty to seven. I don't have the exact time I talked to him that afternoon.

Q Now, isn't it true, Mr. Coates, that when Frank Satterfield came into your office immediately before he made his statement that you went over with him what he was going to say?

A I brought him into the office. The two deputies brought him in there and took a seat, and I advised him of his right, and I found out what he wanted. He was going to talk about the case, and I told him, I said, "Wait a minute, Frank." And, I advised him of his right, and he told me the whole story as it was recorded here. I said, "Now, you have made this in the presence of witnesses. I want you to repeat the whole thing over again so I can record it on the recording machine."

Q So it was, and then on the recording machine, you advised him of his rights again?

A That's right.

Q So, that actually what you are saying is that you told him of his rights four different times?

A That's right.

Q Now, when you advised him of his rights, this is something that you have memorized. Isn't that correct?

A Well, I did memorize it. I have memorized it, yes.

Q So that when a man comes in, you say these things that you have memorized to him?

A The facts given here, yes.

Q And, would you recite what it is that you memorized?

A I first advised him who I am. And, I tell him, "you understand, Frank, you don't have to make any statements you don't believe if you don't want to. You understand that? Yes. You understand that any statement you make can be used against you in court? You understand that? Yes. You understand that you have the right to an attorney before you make the statement? You understand that? That's right. I reckon. I don't know about that. Now, wait a minute. You have a right to an attorney before you make a statement, make any statement. You understand that? Oh, Yes. All right, now. And, nobody has promised you anything?"

Q All right now, that's fine. Now, Mr. Coates, when you tell somebody, advise him of his rights, how do you know he understands what you are saying?

A Well, he says he does.

Q If he says he does, that's enough?

A Well, he understood everything else.

Q Now, when you said, "You have a right to an attorney", he said, "I reckon. I don't know about that."

A I said, "Wait a minute."

Q. That's right. You said, "Wait a minute." Now, it's a fact that when you went back and repeated it, you didn't change it a bit. You just said the same words?

A I said the same words. I said, "You understand that?" He said, "Oh, yes."

Q Now, Mr. Coates, when somebody doesn't understand something, isn't it usual to say, "in other words" and explain to them what it means?

A Well I repeated the same thing to him, and he said he understood it.

Q You repeated the same thing and he said, "yes", so you are assuming he understood that?

A Uh-huh.

Q Now you have had some dealings with Frank Satterfield before this have you not?

A Yes, sir.

Q What were those dealings?

A Forged a check on Harry Mapps a year or two ago.

Q And you investigated that?

A Yes.

Q Tell me something about that?

A I don't have that record up here.

Q Do you remember anything about it?

A I remember all about it but when you get to asking questions about it, I have to have my file on it. I can't tell various things about it.

Q Isn't it a fact that he forged a check in the name of—Harry Mapps name was signed to it and it was signed in Frank Satterfield's handwriting?

A I don't remember the details of it. It's been several years ago.

Q Well, did you have much difficulty in the case? It wasn't much trouble at all catching him on that case was it?

A I don't recall how much trouble we went to.

Q Now, Mr. Coates, I think you testified in the preliminary hearing what made you think Frank Satterfield was guilty. Was that when you said to him that the poison was in the beans and he said, "No, it wasn't put in the beans." Isn't that correct?

A That's one of the things, yes.

Q And, I think you put emphasis on that in the preliminary hearing. Isn't that correct?

A Doctor Wooding was the man that instilled it in my mind without any other doubt that it was put into the beans, and of course, that's what I was asking him about. And, he said, "No, the poison was not put in the beans".

Q Frank Satterfield told you that?

A That's right.

Q And, that made you think he must be guilty if he knew the poison had been put in something else? Now, when Frank Satterfield came to see you, did you have knowledge of the fact that he had thrown up and vomited before he came to see you and couldn't hold stuff on his stomach?

A No, I didn't have any knowledge.

Q While he was there, he was put into solitary confinement. Is that correct?

A We always do until we complete the investigation.

Q He was, in fact, put in solitary confinement?

A That's right

Q That was in the middle of December, and it was a cold night?

A That was January 19th?

Q January 19th, I mean. It was a cold night?

A I don't recall the weather conditions.

Q But, you wouldn't deny it was cold?

A I just don't know.

Q And, did you notice Frank Satterfield was wearing a short-sleeved shirt?

A I don't recall what kind of shirt he was wearing.

Q Now, Mr. Coates, you have been advising people of their right to have counsel for how long?

A Well, we have been advising them of their right to—ever since I've been over here, but every few years they add some more to it.

Q When did you start advising them of their rights to a lawyer?

A Whenever—I don't know. It's been a long time.

Q It's been a long time? And, you mentioned the fact that the standards of the law have changed over the years. Are you in agreement with these standards?

MR. GREER: I object, your Honor. I'm not in agreement, and it doesn't have any reflection upon a person who doesn't agree with some of the procedures coming out today.

THE COURT: I sustain the objection.

MR. MCLAUGHLIN, III: We don't suggest reflection of Sheriff Coates whatever opinion he may hold as to the

rightness or wrongness of the law. But, we think it is crucial to our case to show that Sheriff Coates does not agree with these laws.

MR. GREER: Polls show that over sixty percent of the people in the south don't agree with it.

THE COURT: I sustain the objection.

MR. MCLAUGHLIN, III: Well, since it's a capital case, we will except to it.

BY MR. MCLAUGHLIN, III: (Continuing)

Q Now, Mr. Coates, when this tape was on, did it run continuously from the time you turned it on to the time the confession was completed?

A No, sir. I cut it off once.

Q You cut it off once, and at the time you cut it off—correct me if I'm wrong. At the time you cut this tape off is when you said, "Well, now what was the purpose of putting it in there? Just tell me the truth about it? Answer: No certain reason. Question: You put it in there so they would drink it didn't you? Answer: No. I didn't want them to drink it. I just put it in there. Question: Why did you put it in there? Answer: I don't know." At that point, the tape was cut off?

A No.

Q Where was it?

A "And, you put it in there for the purpose of wiping them out to collect the insurance? That's what you just now told me. Is that right? Answer: That's right." Now, he wouldn't repeat that to me on the recording machine. I cut it off to refresh his memory, and I cut the machine back on to ask him that question.

Q Give it to me again?

A "And you put it in there for the purpose of wiping them out to collect the insurance? That's what you just now told me. Is that right? That's right." It's where he said, "That's right."

Q What page is that on? Four or five?

A Page six, middle ways of the page.

Q At that point you say, what did he say?

A He didn't say anything. He didn't answer the question, and I cut it off and refreshed his memory, and then I repeated the question, and he answered it.

Q That was almost the end of the confession?

A Just about the end.

A About how long did it take for you to get him to refresh his memory?

A Just a minute.

Q You wouldn't say it was over a minute?

A I don't know exactly the seconds and so forth.

Q Well now how long did it take, Mr. Coates? Would you say it could have been over a minute?

A I would say about a minute.

Q All right, about sixty seconds?

A That's right.

Q You don't think it could have been over three minutes?

A No, it wasn't over a minute.

Q Is the tape recorder here?

A Yes, sir.

Q We would like to have it turned on if we could. We have a stop watch here, Mr. Greer. Mr. Akers has checked it. We will have him testify if it's necessary unless you are willing to let us go on and use it.

MR. MCLAUGHLIN, JR.: We want to time this thing for the first five minutes.

WITNESS COATES: This whole thing is going to have to run, because that was the last of the statement.

THE COURT: Can you run the tape off?

WITNESS COATES: I can run it off, Judge. I don't have it down by the number.

MR. MCLAUGHLIN, III: We just want the beginning and the end of it.

THE COURT: I think it will unwind itself down to the end won't it?

WITNESS COATES: Yes, sir. I can get the first part and skip on over.

MR. MCLAUGHLIN, III: You are going to get the confession to where it began?

WITNESS COATES: I've already got it where it begins.

MR. GREER: What do you want to do?

MR. MCLAUGHLIN, III: We want to time—do you agree to let us have this timer used without Mr. Akers coming over here to testify?

MR. GREER: Ask the Court to do it.

THE COURT: What do you want to do? What are you going to time?

MR. MCLAUGHLIN, III: We are trying to time this confession, your Honor. The sheriff testified that the confession began at eight-fifteen and ended at eight-forty, which was forty minutes, which is twenty minutes, excuse me, twenty-five minutes. And, we have tried to test it, and it seems like to us it runs—we read this thing, the confession over, and it runs about eight minutes.

THE COURT: I don't think we can get at that accurately.

MR. MCLAUGHLIN, JR.: If the Court please, may I make this motion, that if the tape recorder ran approximately eight minutes as our indication of it would show, then there was an interval of seventeen minutes during which this machine was turned off. Our theory of the case which we expect to present evidence in regard to the testimony of the witness that several words and harsh words were spoken to Frank Satterfield as duress to have him make this confession, and I think that we are within the rights to have that matter determined by the Court, and I would think that this Court would want that to be determined to see whether or not this is a valid confession by the young man of very little education, and as we will show, a very low I.Q., on the very border line. And, for the further reason that it will be shown that Frank Satterfield himself did not ever know what the word attorney meant. We expect to show, sir, that he knew what the word lawyer meant, but he did not know what the word attorney meant which was memorized to him four times by Mr. Coates.

Now, I know that this Court would not want to have a confession of an ignorant man who did not mean to confess without full knowledge of his rights. I am sure the Court would want to hear that out. However, the Court may disagree, but we are bound by it, sir. And, for that reason,

I feel that the length of this confession which Mr. Coates, under his former statement, at the preliminary hearing and again today has said it was twenty-five minutes, be shown exactly how much it was and what was the interval between the time he turned the machine off and before it was turned back on. And, if that was so, then we have other questions to ask him and his deputies what went on during that period. I think it's very, very essential, sir.

MR. MCLAUGHLIN, III: We may have made a mistake, and it may not be nothing to it. We feel like in deference to our client that it ought to be checked out.

THE COURT: I don't think we can check on it with any accuracy, and as far as the tape is concerned, but I think that thing has minutes on it, and you can tell from the beginning and the end. You can tell how long it was on, the machine itself.

MR. MCLAUGHLIN, III: Maybe you could explain this to us.

WITNESS COATES: Maybe I can clear this up, this time of the interview. The interview was twenty-five minutes. Now, I didn't say that the recording was that long. I didn't mean to say it that way anyway.

CROSS EXAMINATION

BY MR. MCLAUGHLIN, III: (Continuing)

Q What you are saying is that this time this statement is not all on tape?

A From the time he came into our office wanting to make the statement to the time it was finished, I think is when the timing began and when it ended. I can't help what's on there. I think I made the mistake there. Ya'll misunderstood me.

Q All right, fine. Now, you said you made a mistake in the preliminary hearing, that I thought possible.

A That was the entire time we ran there.

Q What you are saying is the tape was not on from eight-fifteen to eight-forty?

A When the tape started and stopped, we cut it off for one time for approximately one minute.

Q So that this discrepancy of seventeen minutes is the time that you were talking to Frank Satterfield before the statement was made?

A I don't know how long this is, Henry, but the entire thing I think was twenty-five minutes.

Q And, when you said in the preliminary hearing what time did you start taking the statement, you said eight-fifteen. That was just a mistake?

A That's the time we started talking, but the first of it was over and then we recorded it.

Q I see. Okay. Now, when you talked to Frank Satterfield, it was in your office the first time. Isn't that correct?

A You mean that night or that morning?

Q And, it was there when you got the pictures on the walls and the bodies had been shot up, the swords and the knives and the guns, legends there of people that have been convicted?

A Oh, yeah, I have the board there on the wall, yeah.

Q And, his family—his family was allowed to come in to see him once. Isn't that correct?

A I don't know of any time his family was turned away.

Q But, he was not allowed to leave? He was in your custody from the time 12:30 on?

A 12:40 on.

Q All right. Mr. Coates, you stated—when did Doctor Wooding call you?

A On the night of the 18th.

Q The night of January 18th?

A That's right.

Q It was not December the 21st?

A No. I didn't know anything about it until December the 18th.

Q You stated that in the preliminary hearing. That was just a mistake of the month wasn't it?

A It probably was, because I didn't know anything about it until January the 18th.

Q Did anybody in the family ask you to have a doctor see Frank Satterfield?

A I don't recall if Frank needed a doctor. I don't know if he had one or not. If he needed one, we can always get one for anybody that's in jail.

Q Well, now, I want to get it straight about this particular defendant. Isn't it a fact that the family asked you before this statement was made by him that they would like to have a doctor look at him?

A I don't recall if they did.

Q You wouldn't deny that they did?

A I didn't see any reason for him to have a doctor.

Q Well, do you remember whether or not they did or not?

A Whether they asked me or not?

Q Yes, sir.

A I don't remember them asking me.

Q Isn't it true that at the preliminary hearing you said you didn't know but that they probably did?

A Well, it's the same thing. I don't remember if they did or not.

Q But, you did state at the preliminary hearing that they probably did?

A I don't know what I said at the preliminary hearing.

Q Now, isn't it true there was no doctor brought to him?

A I don't know that. When we place them in jail, that's the jailer's duty, and if they need a doctor, he can always get the doctor.

Q You don't remember whether or not he had a doctor?

A I don't know. It's not a case of remembering. I don't know, because I'm not there.

Q Would it be a record of it if he did?

A What did you say?

Q Would there be a record of it if he did?

A A record of whether—where the doctor charged his fee. He usually puts his name and the patient on the bill.

Q And you say you didn't think he needed a doctor?

A I didn't see where he needed no doctor.

Q And, if they had asked you for a doctor, would you have gotten him one?

A I certainly would.

Q If his family had asked you for a doctor, would you have seen that he got one?

A I would, if I had a thought he needed one, or if he had asked for one.

Q But, you don't remember whether they asked you and you don't remember whether or not you got a doctor?

A I don't remember whether they asked and I don't know whether they got one.

MR. MCLAUGHLIN, III: All right.

MR. GREER: That's all, sheriff

(Witness stood aside.)

Monroe Anderson

introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GREER:

Q Will you state your name and occupation please, sir?

A Monroe Anderson, deputy sheriff, Halifax.

Q Mr. Anderson, do you recall whether or not you were present on the night of January the 19th, 1966, at the sheriff's office when one Wallace Franklin Satterfield made a statement to the sheriff?

A Yes, I was.

Q What room was it in?

A In the sheriff's office.

Q Do you recall about what time it was?

A I don't know exactly the time. It was just guessing between seven-thirty and eight o'clock.

Q I see. Now, who else was present?

A Me and the sheriff and deputy sheriff Roy Pruitt.

Q Were the lights on in the room?

A Yes, sir.

Q Were you in uniform?

A Yes.

Q Tell us what you observed as Wallace Franklin Satterfield came into the room. Did anybody holler at him?

A No, sir, not as I know.

Q Did—what was his general appearance as he answered the questions?

A Well, he didn't look like he was too upset or nothing in the world—you want me to state just how?

Q Yes, sir. Tell it just like you saw it.

A Well, Mr. Satterfield sent one of the trustees up. I was in the sheriff's office—I mean in the deputies office there, and he said he wanted to see the sheriff. Well, I called the sheriff, and the sheriff came on over, and me and Mr. Pruitt went back and got Mr. Satterfield and brought him up to the sheriff's office, and that's when he confessed.

Q Did you stay in there the whole time Mr. Satterfield stayed in there?

A I stayed in there the whole time Satterfield was in there.

Q Did you—were you present when Satterfield signed the statement later?

A Yes, I was.

Q Did you witness the statement?

A Yes, sir.

Q The statement had to be typed up the next day, did it not?

A I think so.

Q Well, when you signed the statement, did he appear to you to be sick?

A No, sir.

Q Had he been fed when other prisoners were fed?

A As far as I know, yes, sir.

Q Did he complain to you either that night or the next day when he signed the statement that he was sick?

A No.

Q How long have you known Wallace Franklin Satterfield?

A I haven't known him too long.

Q He doesn't live in your neighborhood?

A No, sir, he don't. He lives back in the other territory.

Q Well, did anybody holler at this man or mistreat him in any way when he gave his statement?

A No, sir.

Q You have steam heat over there in that building don't you?

A Yes, sir.

Q Are the cells warm at night?

A Yes, sir. It's just as comfortable as they can be.

Q You are positive you were in that room with the sheriff with Mr. Pruitt and Satterfield the whole time Satterfield was in the room?

A Me and Mr. Pruitt went back to the cell, brought him out, carried him in the sheriff's office, stayed in there as long as Satterfield did, took him out, carried him back and locked him up.

MR. GREER: All right, sir. He's with you.

CROSS EXAMINATION

BY MR. MCLAUGHLIN, JR.:

Q Monroe, you are right familiar with the conditions in our jail are you, sir.

A Yes, sir.

Q Do you know whether or not the heat can be regulated from room to room where it's all under one central control system?

A I wouldn't know that, whether the back room is all separate or not.

Q If the sheriff wants more heat in his room, is not the thermostat in there he can turn up or down as the case requires?

A It's a thermostat plus there's one in the deputies office in the back, but as many times as I been in there, I don't know whether it's one in the sheriff's office or not.

Q Is there a thermostat in the solitary cell room?

A No.

Q Is there a register in there?

A Not as I know.

Q Is the heat that comes through the solitary cell does not come from the outside when the door is open and come through the bars?

A Yeah.

Q Outside the cell?

A That's right.

Q Now, sir, isn't it true that the solitary cell has a steel door or a lined door that shuts tight when a man is in solitary and he can't even see through the bars because of a solid door? Isn't that true, sir?

A The door to his cell has got bars on it, but between the cell he's got a steel door.

Q And, there in solitary, sir, isn't there a solid at the door where you enter?

A No, sir, not going in the cell.

Q It is not?

A No.

Q During the time that Mr. Coates questioned Mr. Frank Satterfield on the evening of January 19th, 1966, was this tape recorder machine turned on all the time?

A Yes, it was on.

Q Was it turned off at any time?

A Yes, it was turned off once.

Q How many times?

A Once, I believe.

Q Have you recently discussed this matter with the sheriff?

A No, sir, not me.

Q Has he discussed it with you?

A No, sir.

Q Now, Mr. Anderson, do you know why it was turned off during the course of the interrogation?

A Do I know why it was turned off?

Q Yes?

A Well, the sheriff asked Mr. Satterfield what did he poison that child for and put the poison in the drink, was it to draw insurance, and Mr. Satterfield dropped his head, no, sir, and he worried for a right good while, and then the sheriff cut it off, and then he raised up and said, "Yeah, that's what I put the poison in the drink for."

Q Is this tape recorder which is the so called oral confession or statement by Mr. Satterfield, are you familiar with that machine?

A No, sir. I don't know too much about it.

Q Do you know how many minutes? Does it show by the minutes how long a man testifies?

A No, sir. I wouldn't know.

Q Do you know the educational background of Frank Satterfield?

A I do not.

MR. MCLAUGHLIN, JR.: Thank you, Monroe.

(Witness stood aside.)

Roy Pruitt

introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GREER:

Q State your name and occupation please, sir?

A Roy Pruitt, deputy sheriff, Halifax County.

Q How long have you been with the department?

A Since January the 1st, 1964.

Q Mr. Pruitt, were you present in the sheriff's office on the evening of January 19th, 1966 when Wallace Franklin Satterfield gave him a statement?

A I was.

Q Who else was there?

A The sheriff and deputy sheriff Anderson.

Q Did you stay in there the entire time that Wallace Franklin Satterfield stayed in there?

A I did.

Q In the office of the sheriff?

A I did.

Q Did you later witness the signature of Wallace Franklin Satterfield to his statement?

A The next day.

Q The next day? About what time was that?

A Around twelve o'clock.

Q And, where was the statement signed by him?

A Up at the front office.

Q Up at the front office?

A Yes.

Q Who was there when he signed it?

A Sheriff, deputy sheriff Anderson and myself, and Robert Rugh may have been. I don't know.

Q And, at that time, how did Satterfield look when he came in to sign the statement?

A Well, he looked normal like.

Q Like he always did?

A Yes.

Q How long have you known him?

A I've probably known him as long as—I expect twelve years or more, twelve or fifteen years.

Q Twelve or fifteen years? He's known you that long too, has he not?

A Yes, sir.

Q Did he ever complain of being hungry, tired or sick that night or the next day?

A No. He never complained to me.

Q He never complained to you? Let's talk a little bit about this cell that they refer to as solitary. It's just a single cell, is it not?

A That's right, a single cell. It has a bed in it and everything.

Q You have a number of single cells over there, do you not?

A That's right.

Q And, the only difference in those cells and the bull pen is that they are single cells. Is that correct?

A That's right, six cells in a row, and the others are just one.

Q I see. When they talk about solitary, they are not talking about a dark dungeon anywhere are they?

A No, sir. We have one cell over there. There's no bed or anything in it, but Frank was not in there.

Q He had a bed and bedding and sheets and pillows and everything that every other prisoner had?

A He had everything just like the rest.

Q And that night when this statement was taken in the sheriff's office, he didn't make any complaints to you about any discomfort at all?

A No, sir.

Q And, the next day when he signed this statement in your presence, he made no complaints at all, did he?

A No, sir.

Q Did he ever request to have a doctor?

A Not to me, no.

Q Do you know whether or not he requested anybody else for a doctor?

A I don't know.

MR. GREER: All right.

CROSS EXAMINATION

BY MR. MCLAUGHLIN, III:

Q He didn't actually have any bedding in the room until he went to sleep did he? You were here when Mr. Coates was testifying?

A No, sir, I was not.

Q You were not? Well, Mr. Coates testified that they don't put their bedding in there until they get ready to go to sleep.

A Well, on the day he's locked up, you don't usually fix the beds at night when they lock the cell on the day you were locked up.

Q You don't recall whether the bedding was put in there before the confession, before the statement was made?

A I don't remember.

Q You were here when Mr. Anderson testified?

A Yes.

MR. MCLAUGHLIN, III: That's all.

* * *

(Witness Stood Aside.)

Bedford Satterfield

introduced on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MCLAUGHLIN, III:

Q Would you please state your name? Would you tell us your name?

A Bedford Satterfield.

Q Are you related to the defendant, Franklin Wallace Satterfield?

A Yeah.

Q What's your relation? What is the relation?

A What—with Frank?

Q Yes.

A He my son.

Q He's your son?

A Right, sir.

Q Do you remember whether or not your son was arrested on the day of January the 22nd—January the 19th of this year?

A He was arrested. I couldn't remember the date.

Q Now, I'm going to ask you about things that happened on that date. Did you come over here to the jail that day? Did you or not?

A Yeah, I came over here.

Q Did you have occasion to see—did you come over with anybody?

A Me and Lewis and my boy.

Q Who is Lewis?

A Lewis Tuttle.

Q And, your son's name?

A Yeah, my son.

Q Now, excuse me. I don't believe I am speaking up loud enough for you to hear me. If you came over here, did you have occasion to see the sheriff?

A Yeah, I saw Mr. Coates.

Q At what time was that?

A I would say about five o'clock.

Q What happened? What went on? Did you speak to him?

A Yeah. I talked with Mr. Coates.

Q What happened? What did you speak of between the two of you?

A Well, I asked Mr. Coates what he thought of it, and he said, "Well, Bed, I think you ought to let the boy stay on down here tonight, and I'm going to run him through a test in the morning." And, I said, "Well, Mr. Coates, if that's what you think is best", I said, "All right."

Q Now, what caused him—did you say anything before he said he thinks he ought to stay up there?

A I just asked him if he thought we could get him out and he said, "Well, I'd rather—I want to run him through a test in the morning." That's what he told me.

Q And, you asked him if you could get him out?

MR. GREER: Don't lead your witness. I don't want you to put words in his mouth.

BY MR. MCLAUGHLIN, III: (Continuing)

Q Well, you asked him if there was any chance you could get him out. Now, what did you mean by that?

A Well, I just asked him was it any chance I could get him out. and he said, "Well, you can get him, but I rather keep him over tonight and run him through a test" or something "in the morning." And, I said, "Anything you think best, Mr. Coates." And, I went on back home.

Q All right. Now, that night did you have occasion to hear anything from Sheriff Coates again?

A Yeah, about eight-thirty, nine o'clock, he called me up and told me, said, "You can come down here and get him." Said, "He done acknowledged to it." And, I said, "Well, Mr. Coates, I been sick and I'll wait until in the morning."

Q Now, when you came in that afternoon, why did you bring Lewis Tuttle along with you?

A Well, I—Tom wasn't at home, and I got Lewis Tuttle. We good friends, too, and he said, "Yeah, I'll go on his bond."

Q When was that?

A It was that same evening. It was that evening.

Q Now, I'm talking about in the afternoon, you said you came over here at five o'clock with Lewis Tuttle. Why did you get Lewis Tuttle to come over here with you at five o'clock?

A I just had him to come over so he could carry me back home.

Q You had him come with you to what?

A So I could get him out and carry him back home.

Q Now, you just testified that you asked the sheriff if there was any chance of getting the boy out?

A Yeah.

Q Now, how were you going to get him out? How did you plan to get him out?

A Well, I thought I would get Tom. Tom has got a whole lot of property and he would go on his bond.

Q Would that have anything to do with your reason of asking Lewis Tuttle to go with you?

A That's what I thought of. I would get him to come with me.

Q Why is it that you didn't get Lewis Tuttle to go his bond that afternoon?

A Well, Mr. Coates told me, said, "Well, Bed, you can do it, but I would like to keep him over so I can run him through a test in the morning."

MR. MCLAUGHLIN, III: All right, that's all.

CROSS EXAMINATION

BY MR. GREER:

Q Mr. Satterfield, did the sheriff ever tell you at any-time that your son wasn't entitled to bond?

A Well, he told me the next morning that he thought it would be the best if me and Tom would come down the next morning. He told me, he said, "I think we would rather keep him and send him up to Marian."

Q You are not responsive to my question. Did the sheriff, that first day on which you were down there, tell you that your son couldn't be bonded?

A No. He didn't tell me he couldn't.

Q He said he wanted to make a test the next day.

A Yeah.

Q That suited you all right, did it not?

A Yeah, that suited me, because I told Mr. Coates, I said, "Well, I'm for the right thing."

Q Then when the sheriff called you that night and told you that your son had confessed?

A I could come on and get him.

Q You could come on and get him, because it wasn't necessary to take the test. Is that right?

A I reckon. He didn't name no test or nothing like that.

Q But, at no time did the sheriff tell you that your son couldn't be bonded?

A No, he didn't.

Q And, of course, later when you talked to the sheriff about being bonded, the family and your—everybody wanted to send him off to the hospital, didn't they? So, that's why he wasn't bonded?

A That's right.

REDIRECT EXAMINATION

BY MR. MCLAUGHLIN, III:

Q Mr. Satterfield, did Mr. Coates ever tell you how much bond was?

A If he told me—to tell the truth, I don't actually remember, because we were talking.

Q I'm talking about that afternoon that you came in?

A No. He didn't tell me. I didn't ask him. I didn't ask him what would it be for his bond. He just told me what he would like to do, and I said, "Well, Mr. Coates, I would like to do the right thing myself."

Q Did he indicate any preference whether he would rather you go his bond or not go his bond?

A Well, he said he would rather me not go his bond, not that evening, because he wanted to send him off to get some tests.

MR. MCLAUGHLIN, III: That's all. Thank you, sir.

(Witness stood aside.)

MR. MCLAUGHLIN, III: Your Honor, at this time, we would like to introduce a medical record signed by Joseph R. Blalock, M.D., John B. Birch, who are both physicians at the Southwestern State Hospital.

THE COURT: All right. Now, that's just for the purpose of this particular thing we are inquiring into right now?

MR. MCLAUGHLIN, III: Yes, sir. Now, your Honor, we discussed this with the Commonwealth attorney and it's my understanding with him—correct me if I'm wrong, that we are, on our own motion, introducing that part of the letter which has to do with the man's I.Q., and Mr. Greer, on his motion, is introducing that part of the letter as to the opinions of these authorities as to his legal standing. It's done that way, because the part as to the I.Q. is what we want in and the part as to legal sanity is that part he wants. We want it all in, but we do not want to be stopped from a later plea of incompetence, then if that's okay with the Court.

THE COURT: For the purpose of this argument, I think it's all right to just go on and put the letter in.

MR. MCLAUGHLIN, III: I'd like to read the letter. "Dear Mrs. Fox: The above named was admitted to our hospital on February 8th 1966, having been committed by your court for observation and report pursuant to Section 19.1-228 of the 1950 Code of Virginja, as amended. His charge is murder. Since admission, he has been carefully studied and history obtained so far as practical. As a result of our observations, we beg to report that he is not now psychotic or insane and that he has not been psychotic or insane since admission. Our official diagnosis is 'no mental disorder (mental deficiency, mild)'. Using the Wechsler Adult Intelligence scale, he scored a verbal I. Q. of 71, a performance I. Q. of 65, and a full scale I. Q. of 67. It is believed by the psychologist that he is able to function in the lower limits of mental deficiency, mild. He is, in our opinion, mentally competent and able to return to court and stand trial to testify in his own defense. In accordance with Section 19.1-230 of the 1950 Code of Virginia, as amended, it would be most appreciated if you would have the Judge issue an order and send for the patient in the next few days at which time it will be necessary for us to have an order for his release. Respectfully, Joseph R. Blalock, M. D., Superintendent, John B. Birch, M. D., Chief of Service." Signed by both of them. Copies to Honorable William Waller, Judge; Mr. J. Willard Greer, Commonwealth's Attorney; Doctor Hiram W. Davis, Department of Mental Hygiene and Hospitals, and it is addressed to Mrs. Helen P. Fox, Clerk, County Court of Halifax County.

We would like to call Sheriff Coates back for just about two questions.

previously introduced by the Commonwealth and previously being duly sworn, is recalled on behalf of the defendant, and further testifies as follows:

DIRECT EXAMINATION

BY MR. MCLAUGHLIN, III:

Q Sheriff Coates, you knew the Satterfield family pretty well didn't you?

A Yes, sir.

Q And, you knew that Frank Satterfield had had only about a sixth grade education didn't you?

A No. I didn't know that.

Q But, you knew he was not as educated as the rest of the family?

A I didn't know what his educational background, status, was.

Q Did you have any indication that he was not a very intelligent person?

A No. I had some dealings with him a few years ago.

Q Wasn't it a rather senseless act, not a very intelligent crime that you investigated him in regard to?

A You mean several years ago?

Q Yes, sir.

A Well, it was a foolish thing to do..

Q And, when you questioned him first in your office, was anyone else there?

A That morning you mean?

Q Yes, sir.

A No. I don't believe it was.

MR. MCLAUGHLIN, III: That's all.

(Witness stood aside.)

Wallace Franklin Satterfield

the defendant, is called, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. MCLAUGHLIN, III:

Q Would you please state your name?

A Wallace Franklin Satterfield.

Q Your age?

A Twenty-three.

Q Did you—were you in the jail down here in the jail on January the 19th of this year?

A Yes, sir.

Q How did you get there?

A I drove my car.

Q Did you go straight to the jail?

A Yes, sir.

Q Did you go into see the Sheriff?

A I went in to the desk and the woman told me that Mary Lou and Mr. Coates was up there in the other office and they would be back in a few minutes, just have a seat.

Q What did you do at that time?

A Well, I said, "I'm going ahead to get me a hot dog and a Coca-Cola", because I hadn't eat no breakfast and didn't eat nothing the next day either, the day before.

Q All right. What did you do?

A I went down and ate a hot dog and Coca-Cola and come out to the street and lost them.

Q What do you mean lost them?

A Went back and vomited up.

Q All right. What happened next?

A I come on back up there and in a few minutes, Mr. Coates come in.

Q What happened then?

A He called me to his office and I went on into his office.

Q He called you into his office?

A Yes, sir.

Q Where did you sit?

A I sit on the side of his desk.

Q Okay. What happened?

A He asked me, he said, "Didn't you kill that boy?" I told him, "No, sir." And, he said, "Well, I'm going to have you charged with murder before you leave here." I asked him what my bond is. He said, "Ten thousand dollars ($10,000.00)." And, I said, "Can I call J. Jim?" And, he said, "Yeah." And he started cussing.

Q What did he say?

A He was calling me a god-damned liar, a killer, a murderer, thief. He kept on like that about fifteen or twenty minutes, maybe longer.

Q And, what did you say?

A Well I told him I didn't do it, so he took me on back then and I called daddy from the back and daddy and Lewis came on over.

Q What did they say to you?

A Who, daddy?

MR. GREER: Objection. That would be hearsay, what they said to him.

MR. MCLAUGHLIN, III: Okay. Go ahead.

BY MR. MCLAUGHLIN, III: (Continuing)

Q Then, what happened next?

A Well, they took my fingerprints, took my picture, took me on back there and put me in the big cell, and then Mr. Coates come out there about twenty minutes later, and they put me over in the small cell.

Q Put you in the what cell?

A The big cell, I reckon what it was. And, then took me back and put me in the little cell.

Q What were you wearing at that time?

A A red short-sleeved shirt and a pair of overalls.

Q What kind of weather was it?

A Snow was on the ground.

Q What?

A Snow was on the ground.

Q Snow was on the ground?

A That's right.

Q Did this have any effect on you?

A It was cold.

Q You say it was cold?

A Yeah, it was cold.

Q And, I want to ask you if it was any effect on you?

A What do you mean?

MR. MCLAUGHLIN, III: Your Honor, we have introduced evidence to show this witnesses I.Q. and ask permission to be able to lead him to some extent.

THE COURT: What?

MR. MCLAUGHLIN, III: Having already been taken in evidence of his mental condition . . .

MR. GREER: I object, your Honor. He has got a full scale I.Q. of whatever that paper says—67, and most of these people we deal with in criminal cases are in that classification. He is bound by the . . .

THE COURT: Now, what was it you wanted?

MR. GREER: He wants to lead his own witness.

MR. MCLAUGHLIN, III: I want to be allowed to lead him on this—lead him to some extent on the ground that he does not have intelligence of the kind of witness you are not allowed to lead.

THE COURT: I think he can answer the questions all right intelligently. You can ask him the question. If he gets to where it does, why we may let you cross examine him. But, I don't believe you are entitled to it as the circumstances stand now.

MR. MCLAUGHLIN, III: I feel like I've got to that point now.

THE COURT: What is it that you want to ask him?

MR. MCLAUGHLIN, III: Whether or not he was cold?

THE COURT: Well, you can ask him.

BY MR. MCLAUGHLIN, III: (Continuing)

Q Were you sick at that time?

A Yes, sir.

Q Did you feel cold?

A Yes, sir. I about froze.

Q You say what?

A Cold. I was just about froze.

Q All right.

A I told Mr. Coates. Mr. Coates come back there about seven-twenty, and he took me to his office and turned the heater up in his office, and he cussed me about twenty minutes, and then he took me back. And, I told him—I asked him could I get a doctor and a bed and mattress, things to sleep on, and he said, "No. We don't give nobody no mattress and stuff to sleep on."

Q Was anything said about bond by anybody, either you or Mr. Coates?

A He told me if I would tell him I would testify I done it he would call daddy and then they could come get me.

Q How long have you been sick?

A Took sick that morning.

Q Sick that morning?

A I eat that hot dog, and it come right back up.

Q Do you have any idea why you were sick?

A No, sir. Had an upset stomach.

Q Did Mr. Coates advise you at any time that you had a right to counsel?

A He told me one time. That was during the confession that I had a right to an attorney.

Q Do you know what that word means?

A I didn't not then.

Q Do you know what it means now?

A Yes, sir.

Q At that time, you say you did not know what it meant?

A No, sir.

Q Did you know at that time what the word lawyer meant?

A Yes, sir. I knew what lawyer meant.

Q Why didn't you know what attorney meant?

A I just didn't know, 'cause I hadn't never paid no attention to them. I had just always heard them called a lawyer.

Q How many years have you been to school?

A I went right many years.

Q I mean what grade to did you get?

A I went to the sixth.

Q Through the sixth grade?

A Yes, sir.

Q What kind of grades did you get?

A I made F on everything except conduct. And, I made A on conduct.

Q You made A on conduct?

A Yes, sir.

Q You made F of everything else?

A Yes.

Q How come you graduated from one class to another?

A They just put me up every year.

Q Just put you up every year? Did you ever have any sickness when you were a child?

A Yes, sir.

Q What was it?

A I had menis meningitis.

Q What was the name of it?

A Menis meningitis.

Q Say it again?

A Menis meningitis.

Q What are you talking about? Spinal meningitis?

A I believe so.

Q Are you sure? Spinal meningitis?

A Yes, sir.

Q When was it that you had that?

A When I was in the third grade. I was nine years old.

Q You were nine years old? Now, tell me again. What did you think Sheriff Coates was talking about when he said you have a right to an attorney?

A I didn't know what he was talking about.

Q You didn't know what he was talking about?

A No, sir.

Q Why didn't you say something about you didn't know what he was talking about?

A I just didn't.

Q Were you afraid of the sheriff?

A Yes, sir. 'Cause I had—was cold, sick. I had been over here in court all day the day before over here.

Q Have you ever been in any trouble before?

A Yes, sir.

Q Did you have any dealings with the sheriff then at that time?

A Yes, sir.

Q You say you were afraid of the sheriff?

A That's right.

Q You say that he—now, did the sheriff advise you of your right to an attorney or lawyer before he put it on tape?

A No, sir.

Q Did he advise you of your right to remain silent?

A Not when that tape recorder was on. It was only when he told me about it.

Q Now, let me get it straight. I just want to get it straight. When you came—when the sheriff brought you in at twelve o'clock . . .

A He didn't bring me in.

Q Huh?

A I drove my own car in.

Q I mean when you went in to the Sheriff's office . . .

A Yes, sir.

Q Did you understand you could leave if you wanted to?

A No. He just—the woman in there told me Sheriff Coates wanted to see me, to have a seat. He would be back in just a few minutes. He was up at Mr. Greer's office.

Q You say a woman in there told you that Mr. Coates wanted to see you?

A Yes.

Q Had you seen the sheriff before that?

A I seen him that morning up at the house.

Q They told you that he wanted to see you?

A That's right.

Q When you went in his office. Isn't that what you said?

A I went inside the thing and sat down.

Q And, at that time, did Sheriff Coates advise you of your right to counsel?

A No, sir.

Q Did he advise you that anything you said could be held against you?

A No, sir.

Q When he came back at five, six o'clock that night, did he advise you of your right to counsel?

A No, sir.

Q Did he advise you of your right to remain silent?

A No, sir.

Q Did he advise you of your right to a lawyer?

A The only time he advised me of that was an attorney when he took it on the tape recorder. That was the only time he said anything about an attorney.

Q Has anybody discussed with you the significance of this since you have been arrested?

A No, sir. I don't reckon.

Q Have you talked with your lawyers about the question of whether or not confession is admissible?

A Yeah, I've talked to ya'll.

Q You have?

A Yeah.

Q So, has it been explained to you what attorney means?

A Yes, sir.

Q So that you know what it means now?

A Yes, sir.

Q Did you know what it meant at the time you were arrested?

A No, sir.

Q Did you know that at the time you made your statement to the sheriff?

A About what?

Q Saying that you killed your son on purpose, that you had poisoned your son?

A Make that clear. I didn't understand it good.

Q I say, at the time that you made your statement on this tape recorder to the Sheriff where you said that you had put this poison in that Diet-Rite Cola, at that time, did you know what the word attorney meant?

A No, sir.

MR. MCLAUGHLIN, III: That's all.

CROSS EXAMINATION

BY MR. GREER:

Q Mr. Satterfield, if I understood you correctly, you came over here to the Sheriff's office for what purpose?

A Well they come to the house that morning, and got Mary Lou, and she told me to come by and get her daddy, and I told her, I said, "There ain't no need to get your daddy 'till we see what's going to happen. I'll come on over here then if anything ah . ."

Q So, you came to the Sheriff's office yourself?

A Yes, sir.

Q And, you were coming to see the sheriff yourself, were you not?

A No, I come to see her—get her.

Q To see your wife?

A To get her and take her back home, yes.

Q So, when the sheriff came in to talk to you, he was mean to you there?

A Yes, sir.

Q And, he cursed you?

A Yes, sir.

Q For about twenty minutes?

A Yes, sir.

Q And, then he put you in jail?

A That's right.

Q In a cold room?

A Yes, sir.

Q And, you didn't have any food?

A They brought some back there, but you can't eat it.

Q Oh, I see. And, then the sheriff came over again later that night, and you say he was mean to you again?

A Yes, sir.

Q And, he cursed you?

A That's right.

Q And, then he put you back in a cold cell?

A He put me in a room back by myself.

Q And, then he left and then you sent for him?

A That's right.

Q Is that right?

A Yes.

Q Why did you send for him if he had been so mean to you all day long?

A 'Cause he told me I could go home, and he called daddy and them that night and they was right there—Roy Pruitt and Monroe Anderson.

Q Now, you've known Roy Pruitt for about twelve years haven't you?

A Yes, sir.

Q You never once told him you were sick did you? You saw him over there at the sheriff's office time and time again. You never told him you were sick did you?

A He didn't come back there but one time.

Q Well, that night when you went in the sheriff's office, and you made your statement, you didn't complain to him then that you were sick?

A I told Tom Coates I was sick. I wanted a doctor.

Q You didn't tell him in the presence of Roy Pruitt did you?

A No. They wasn't in there at the time, but he called them.

Q Roy Pruitt said he was in there with you the whole time?

A No, sir. He wasn't.

Q You say Roy Pruitt is lying then?

A That's right.

Q Monroe Anderson is lying too?

A That's right.

Q Everybody is lying except Wallace Franklin Satterfield?

A I'm telling you the truth.

Q All right. Now, the next day I suppose you shivered all night long—cold and damp. Is that right?

A I stayed cold all night.

Q You did?

A Yes, sir.

Q Did you get any breakfast the next morning?

A They cooked an egg, but I couldn't eat it. A cup of coffee. I drank the coffee and lost it right in the commode.

Q You never did tell anybody over there at the sheriff's office you were sick did you?

A I told Tommy Coates.

Q You never told Roy Pruitt?

A He didn't come back there the next day.

Q He came back the next day when you signed that statement. Now, what about that, sir. Were you sick when you signed the statement?

A Yes, sir.

Q You had a whole night to think about it after making it, and then you come back the next day and sign it after it was typed up. Who was present?

A Nobody but myself, Tommy Coates and Monroe.

Q Roy Pruitt said he was present when it was signed. Is he lying about that?

A He might have been standing back in the corner, but he wasn't around there where I could see him.

Q Uh-huh. And, they made you sign that paper against your wishes. Is that right? Is that what you tell the Court?

A He cussed me and told me I better sign it. Told me to sign it.

Q The sheriff cussed you again?

A That's right.

Q In the presence of Monroe Anderson and Roy Pruitt?

A That's right. I don't know if Roy was standing there. He might have been standing behind me. I know Monroe was standing there.

Q Now, you say you don't know what the word attorney means?

A No, sir. Not at that time.

Q Now, are you saying that the sheriff has promised you something?

A He told me I could go home.

Q Then why did you say in this statement when he asked you the question—Nobody has promised you any favors of any kind, made no threats towards you, and you answered no. Now, why did you say that?

A He told me to say it.

Q He told you to say it?

A Yes, sir. He told me I better make a confession so I could go home.

Q And, he makes this statement to you—And, you are making this statement of your own free will? And, your answer is—yes, sir. Now, who made you say that?

A He told me.

Q Did he make you say that?

A Yeah, he made me say that.

Q Did he make you say that you knew your wife and two children had been sick that night, the night before? Did he make you say that?

A They wasn't sick. I didn't know anything about it.

You made that statement and this statement....

A That's what he told me.

Q And, he made you say that?

A He didn't make me say it.

Q How long have you been working over at J. P. Stevens before you were arrested?

A Approximately three years.

Q What shift did you work?

A Second. I worked the third for a while and then they put me on second.

Q Do you have a driver's license?

A Yes, sir.

Q Have you been working full time at that plant?

A Yes, sir.

Q Supporting your family?

A Yes, sir.

Q Now, you want to tell us you are of such low mentality you didn't know what was going on in that room. Is that what you tell the Court?

A What do you mean?

Q You say that this whole statement here that you signed yourself, the next day after it was taken on this tape, you say all of that was forced upon you? Is that what you tell the Court?

A Tom Coates told me to say it. He didn't make me say it. I said it.

Q All right. That's all.

REDIRECT EXAMINATION

BY MR. MCLAUGHLIN, III:

Q Now, Frank, did you tell Mr. Coates that you were sick?

A Yes, sir.

Q Did you ask that a doctor be sent there?

A I asked him for a doctor,

Q Did you ask him for anything else?

A I asked him could he get me a doctor.

Q Did you ask for any medicine?

A I didn't ask for no medicine—just asked him could he get me a doctor down there.

Q How were you feeling?

A I was feeling a upset stomach, heaving, couldn't keep nothing down. He would bring me a Coca-Cola back there, and I heaved it right back up the time they bring it.

Q So you hadn't asked for anything—food to eat or drink, huh?

A No; sir.

Q Now Mr. Gree has brought in new matter here about you working at J. P. Stevens. What type of work do you do there?

A I hang warps.

Q Is that a simpleoperation?

A Yes, sir.

Q What do you have to do with your hands?

A Just lay them in there.

Q Pick up something?

A That's right. Just pick it up and lay it over in there.

Q That's all you do?

A Yes, sir.

Q You don't work in the office? You work physical—maybe pick up something over here and put it a few feet away?

A That's right.

Q That's all you have to do?

A We have to put it in there, take the truck and—see, I have two men working with me. Me and another man.

Q Yeah?

A And I just help him. He showed me.

Q What does he do?

A See, me and him work together. We got six hundred and some looms. We have to work by-ourself.

Q What do you do with the looms?

A I put the warp back up in there.

Q What does it consist of? You say you lift something here. What do you lift up?

A That's the warp. You have to lift the warp up with your hand.

Q How far do you carry it?

A Just a little way.

Q How far?

A Just pick it up—I would say about a foot, a foot and a half. Just pick it up and put it over here.

Q About a foot. What's the warp made of?

A Steel.

Q Huh?

A Steel.

Q It's not made of any kind of cloth material?

A No, no. Warp isn't.

Q You take some steel thing and move it about a foot?

A That's right.

Q And, you do it from different machines?

A That's right.

Q And, you say a man helps you?

A Yes, sir.

Q What does he do?

A He works one end, and I work the other end.

Q I see. And, both of you lift it together?

A That's right.

Q And, you put it in one place?

A That's right.

Q One after another? Do you go up a line of machines and do that?

A No. Maybe sometimes you liable not to do nothing for a week. Just depends on when they run out.

Q Mr. Greer is talking like this takes a lot of brains to lift up something and move it a foot. Does it take any brains to do that?

A No, sir. The only thing it is, you have to be mighty careful. So many people working in there. You liable to hit one of them. That's the only thing to do. You have to be mighty careful.

Q Frank, when was the mattress put in your cell that night?

A It wasn't any put in there.

Q After you were taken out of the cell at eight-fifteen and took up to Mr. Coates office, did you say anything about your condition?

A Yeah. I told him I was sick.

Q Were you warm or cold?

A I was cold, about froze.

Q What did Mr. Coates do?

A He turned the heat up.

Q Turned the heat up in his office?

A That's right.

Q What was the first word said to you by Mr. Coates?

A When? Before I made the confession?

Q What was that?

A Huh?

Q Yeah, before you made the statement?

A He just asked me did I kill that boy. I told him no, and he started cussing. He said, "I know damn well you did." I said, "No, I didn't."

Q I mean that night you had sent word for him to come. You sent word for him to come on over. You were going to make a statement. Is that right?

A That's right.

Q You did say that?

A (Defendant nodded his head to indicate yes.)

Q Now, you went up to his office and he turned up the heat. Now, how long were you up there?

A Before when I was making the statement?

Q Yes.

A He got there about eight o'clock, and I was back there until about ten minutes to nine.

Q As I understand, you go through a rather long corridor to reach his office at the front of the building. Is that correct?

A That's correct.

Q And, you say he turned up the heat then, and then what was said then? Anything?

A He just said, "are you going to tell me the truth, and are you going to tell me you done it. And, I will let you go on home. I will call your daddy and he can come get you tonight."

Q And; then you made a statement in compliance with what he said to you?

A That's right.

Q Then, where you—where were you taken back then? Were you put back in solitary—a solitary cell?

A Yes, sir.

Q Or, were you put back with all the rest of them?

A Put back in the little cell.

Q Huh?

A I was put back in the little solitary cell.

Q When you went back there, was a mattress on your bed?

A No, sir.

Q What time of night—well, we know what time it was. How soon was any mattress brought to you?

A They didn't bring no mattress.

Q Did you sleep on the bed that night?

A Yes, sir.

Q Or, did you sleep on the floor?

A I sleep on the bed. It won't a mattress on it.

Q Did you have a pillow?

A No, sir. Had a little thin jacket, and I put that up there for my head.

Q Huh?

A I had a little thin jacket, a little wind breaker. I had to use that for my pillow.

Q That was before you made the statement.

A That was after he put me back there after I had done made the statement.

Q Well, they said they had put mattresses in there then.

A No, they didn't. They didn't put no mattresses.

Q You mean they put no mattress in there at all?

A No, sir.

Q When were you taken out of there and put in another cell with other men?

A I won't put in there. I stayed there all the time until after I went up Marian.

Q Now, a few days later you had a hearing to send you down to Marian?

A That's right.

Q Did you have a lawyer at that time?

A No, sir.

Q And, after that your people came to see me?

A That's right.

MR. MCLAUGHLIN, III: That's all.

(Witness stood aside.)

NOTE: Mr. McLaughlin, III has asked the sheriff to get a witness, Odell Abbott, who is on call.

THE COURT: Is it any point in getting Odell? Can't you stipulate?

MR. GREER: All she can say is that was the way she understood it.

MR. MCLAUGHLIN, III: Your Honor, we just got the statement from here which she said was correct, and as I have read it, the only discrepancy is the sheriff said in this statement. The question was asked the sheriff—if you told him if he confessed you would give him bond, and he said, I don't know.

MR. GREER: I've never seen this, your Honor.

THE COURT: Look at it. I think you can stipulate.

MR. GREER: It may be that I want to stipulate to more than that one statement.

MR. MCLAUGHLIN, III: We will be glad to have the whole thing stipulated.

Sam Rogers

introduced on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MCLAUGHLIN, III:

Q Mr. Rogers, did you come over here on the night of January the 20th—on the morning of January 20th?

A I come, yeah.

Q Came over to the jail?

A Yeah.

Q Did you have occasion to speak to the sheriff?

A I asked to see him.

Q You asked to see him?

A Yeah.

Q Did you see him?

A Yeah.

Q What went on?—in this conversation?

A Well, he stated to me that he had the boy up for murder and convicted him and all. And, I told Mr. Coates, I said, "Ain't that going a little too far"?

MR. GREER: I didn't hear what the witness said.

THE COURT: Talk a little louder.

BY MR. MCLAUGHLIN, III: (Continuing)

Q Talk a little louder.

A I went in there and I asked Mr. Coates about going the boy's bond. And, he then brought up—he wanted to appear to me that the boy was already guilty. That he had him charged him with murder.

Q Go ahead. Just tell us everything that happened in this conversation.

A And, I asked him. I said, "Mr. Coates arn't you going a little bit too far?" I said, "You are trying the boy before he's even tried." He said, "Well, I know it." He said, "Well, I'm the sheriff."

Q What I am trying to get to where, did you have occasion to discuss the subject of Frank Satterfield's health at this time?

A Not then, not until I went to the cell to see him.

Q When did you go to the cell to see him?

A That morning.

Q This was the morning after January the 19th?

A That's right. And, he—the boy was sick.

Q You say what?

A The boy was sick, vomiting.

Q He looked sick to you?

A Yeah. He was sick.

Q Did you say anything about this to the sheriff?

A Yeah. I asked him to get the boy a doctor down there. He said, "Well, I will." But, he didn't.

CROSS EXAMINATION

BY MR. GREER:

Q What is your relationship to Mr. Satterfield, Mr. Rogers?

A I married his sister.

Q You married his sister? And what the sheriff actually told you on Monday morning was that the boy had confessed to putting the poison?

A That's right.

Q In the bottle. Isn't that what he told you?

A Yeah.

Q And, the sheriff at no time denied this boy's right to have bond, did he?

A Well, not as I can say, no.

Q Didn't the family want this boy sent off to Marian to be examined?

MR. MCLAUGHLIN, III: Your Honor, we object to that.

MR. GREER: Well, you are asking him—he is in the family.

MR. MCLAUGHLIN, III: I didn't ask him anything about the bond. I wish I could, but he didn't know anything about that. He came over the next morning.

THE COURT: He testified about the bond?

MR. MCLAUGHLIN, III: No, sir. He hasn't testified at all about the bond as I remember. He talked about him being sick. Excuse me. You said something about bond the next morning. I am sorry.

WITNESS ROGERS: That's what we went over there for—bond to get the boy out.

BY MR. GREER: (Continuing)

Q Well, the sheriff never told you he could not be bonded did he?

A Not as I can recollect.

Q And, the family didn't want to bond him did they?

A Yes. We were over there to bond him.

Q But, you decided not to bond him didn't you?

A Well, Mr. Coates said they were going to send him off down and give him a lie test.

Q Well, he didn't do it?

A The next thing I heard from the boy after that, he was sent to Marian, given a hearing just unbeknowing to any of us.

Q Didn't you all talk to Mr. Coates about him going to the hospital?

A Yeah.

Q And, the family wanted him to go to the hospital didn't they?

A I told them it would be perfectly all right.

Q Did—so, that's why they had a hearing to send him to the hospital because everybody was in accord. Isn't that correct?

A Yeah, but they just brought him right up here to the hearing and never let nobody else know nothing about it.

Q Well, you employed Mr. McLaughlin—the family did?

A Not at that time.

Q I know, but he was employed by the following Saturday, and the boy was here from that time until some time

in February before he was sent to Marian. He was here for several days, maybe as much as two weeks after Mr. McLaughlin was employed?

A Not no two weeks after he was employed.

Q Well, we don't have a calendar, but that could be determined very easily. So, Mr. McLaughlin did not object to him going to the hospital? Did you know that?

A No, I didn't object to it.

Q And, Mr. McLaughlin didn't object to the bond being too excessive or anything. Nobody has ever claimed that have they?

A No.

MR. GREER: All right, sir. That's all.

REDIRECT EXAMINATION

BY MR. MCLAUGHLIN, III:

Q What I was asking you about was you told him he ought to get a doctor. Is that right?

A I told him the second time, and the third time, I had to hire a lawyer to get the boy a doctor down there to the cell.

RECROSS EXAMINATION

BY MR. GREER:

Q Did you hire Mr. McLaughlin?

A Yeah.

THE COURT: Any other questions?

MR. GREER: No, sir.

THE COURT: Thank you, sir. Stand aside.

* * *

(Witness stood aside.)

MR. MCLAUGHLIN, III: All we have left, your Honor, is the preliminary hearing, and we think if we can get that in the record.

MR. GREER: Well, don't you have any page number of what you want?

NOTE: Mr. Greer and Mr. McLaughlin, III are conferring.

MR. GREER: I can't stipulate to anything, your Honor, because they want to stipulate the whole transcript.

THE COURT: All he wants to do now is, I suppose, is bring Odell here to show that she would testify she recorded the whole thing as best she could, according to her understanding.

MR. GREER: That's all she can do.

THE COURT: That's all she can do, and that's all you want to stipulate.

MR. MCLAUGHLIN, III This is her recollection of what happened?

THE COURT: Yes.

MR. MCLAUGHLIN, III: If you will stipulate that?

THE COURT: That's all she can testify to.

MR. GREER: That's right. But, I'm not putting this into the record.

THE COURT: No, except what he's already read into the record.

MR. MCLAUGHLIN, III: Well, I was going to read to her the statements that were made.

THE COURT: You've already done that. It's in the record I think. All you want to stipulate now is Odell Abbott took the evidence and transcribed it to the best of her ability.

MR. GREER: I will stipulate that she would say that if she was here.

MR. MCLAUGHLIN: Your Honor, I put these things in the form of a question. This is a technical question. Should it be read now as a stipulation that this is in fact, because I'm not allowed to testify myself?

THE COURT: I think you've got it in evidence, because you've already questioned the Sheriff about it. I think all you need to say now is that if she were present, she would testify that she took the evidence and recorded it to the best of her ability.

MR. MCLAUGHLIN, III: And, recorded things which I stated to the sheriff was in this.

THE COURT: Yes. That's already in the record. All you can call the court-reporter for is to show that it is correctly recorded.

MR. MCLAUGHLIN, III: Can we put this things in as an exhibit?

THE COURT: No, I don't think so. That would have to go to the jury if you did that.

MR. MCLAUGHLIN, III: Well, we can.

THE COURT: That's all you could ask her if she came here. You could ask her if she properly recorded it.

MR. MCLAUGHLIN, III: She has a certificate at the back, Your Honor, signed by her.

THE COURT: That's all you can show by her.

MR. MCLAUGHLIN, III: The only thing I know is that I know counsel is not allowed to testify, and what I asked him is not part of the evidence. If you said she says this is a correct transcript, nothing can go into the record as to what was in this transcript in the form of testimony.

THE COURT: Except what you've asked the Sheriff in regard to it. You read the questions to him.

MR. MCLAUGHLIN, III: But what is in here and what the Sheriff said don't fit.

THE COURT: But, you are going to show by her that she recorded it to the best of her ability. That is all you have got.

MR. MCLAUGHLIN, III: Yes, sir. But, I thought I would have to get her to read these statements rather than have my questioning be evidence.

THE COURT: The purpose of this hearing—it's no point in her—it's in the record, and if she says that it is the best she could do, why that's it.

MR. MCLAUGHLIN, III: That's all we had.

At the conclusion of the above evidence, counsel argued the admissibility of the confession into evidence. The argument is set forth below in its entirety:

[TR. PP. 192-222]

THE COURT: Did you want to argue?

MR. GREER: Yes, sir. Your Honor, this statement taken on January the 19th, 1966, in the sheriff's office of Wallace Franklin Satterfield in the presence of Deputy Sheriff's Roy Pruitt and Monroe Anderson touches all bases, all bases insofar as the requirements of the many, many decisions concerning the constitutional rights of a person charged with a crime.

It's the best statement that I have ever seen the sheriff take, because he tells this man who he is. He properly identifies himself. And, he tells him that you don't have to make a statement. You don't have to make any statement to me if you don't want to. You understand that? And, the defendant says, "yes". And, he says—the next question—"You understand that any statement you make can be used against you in Court? You understand that?" The defendant says, "yes". And, then he says, "you understand you have the right to an attorney before you make a statement? Do you understand that? That's right. I reckon. I don't know about that. Now, wait a minute. You have the right to an attorney before you make any statement. You understand that?" And, the answer is, "Oh, yes." Not, just plain yes. It's "Oh, yes." All right. "Now, has anybody promised you anything? No. Nobody has promised you any favors of any kind, made no threats towards you?" And, the answer is, "No." And, "you are making this statement of your own free will?" Answer, "yes, sir."

The question—"All right, Frank, now on December 21st, tell me what happened." And, then he asks him these series of questions in which he goes into the circumstances. And, then, over on the last page, the sheriff asked him if it was anything else he wanted to say about this matter, and he said, "No, I don't reckon it is." And, then he asked him, "Frank, now who is in here listening to you while you make this statement besides myself?" He says, "Roy Pruitt, and I don't know him." Question—"Roy Pruitt and Monroe Anderson. Both of them are deputy sheriffs. Both of them have on uniforms. Correct?". Answer—"That's right."

Question—"You have given this statement of your own free will and accord?" Answer—"That's right."

Now, that was put on this machine, which counsel for the defense has listened to. They have had copies of this statement previous to today.

And, the next day around noon, Satterfield signed this statement. And, as witnessed by these two officers signed in the presence of the sheriff.

And, all of this that we have heard here a good while, I submit to you, your Honor, has been frivolous, petty objections to get around the introduction of this very incriminating statement.

Now, this man hadn't been mistreated. Nobody has mistreated him over at that jail. He's known one deputy for twelve years. And, his father and Mr. Rogers and Mr. Tuttle and all the people from Turbeville, they know the sheriff, and they know Mr. Pruitt, and they know Mr. Anderson. And, they know he hasn't been mistreated.

So, I submit to you that because of these absurd decisions coming out of Washington concerning the rights of the individuals who are in custody and are being interrogated because they are charged with crimes, that we are going to be faced with this type of thing in trial after trial.

This statement is fully and completely voluntary, and even the Miranda decision says voluntary statements are admissible. They are not interfering with regular routine procedure so long as it is voluntary.

You've got this element in this case, Your Honor. The Sheriff talks to this man about six-thirty, and he doesn't want to talk to him. So he says, "Well, Frank, I am going home, but if you decide you want to talk to me, you just let me know and I will come back." So Frank goes on back in that cell, and he reflects upon his relationship to himself and to his family and to society, and he decided he wants to talk to the Sheriff. So he gets Mr. Monroe Anderson to call him. And Mr. Anderson calls him, and he comes on over.

And, so nobody has done anything to this man except himself. And through his own shame, and through his own

guilt, he made this statement. And with the other corroborated evidence, it's the best evidence in the world for this corpus delicti crime committed. And I submit to you that society will not long survive if criminals can be released on society because of the frivolous, petty objections that we heard in the courtroom today.

And I say in the name of all that is Holy, in the name of all that's right and good, that this statement is admissible evidence against this man.

Thank you.

MR. MCLAUGHLIN, III: May it please the Court, I apologize to Mr. Greer and the Court for this rather disjointed manner in which I questioned these witnesses on the questioning of the admissibility of the confession.

We think we can show from discussing this record that our objection to this thing is not a matter of frivolity and pettiness, but rather it's a matter of law, and it goes to the heart of the law as handed down by our courts. And Mr. Greer says that these decisions are absurd. He has stated while we were here or here that most of the people in the country disagree with these decisions. But, that's not the question today.

The question is, what is the law and what must be the decision on the law. Now this is a case which I borrowed—Miranda versus United States. This decision came down, I believe, from June the 13th of this year. Now the decision says a number of things, but as relevant to the facts we have here, these are the things the decision say.

It says the Sheriff must inform suspect that he has a right to remain silent; that he does not have to speak. He has to be warned that anything he says can be held against him. He must be informed that he has a right to counsel, to a lawyer. He must be informed that he has a right to an appointed lawyer.

And, this is a crucial point. This is the form that the Sheriff is required to go through. But the crucial thing here is that the Miranda case says that to make it clear to that suspect what he is talking about.

Now the case says that the defendant has got a constitutional right to have a lawyer there in the room while he is being questioned. And unless they have a lawyer there in the room, they cannot question him unless the defendant intelligently and with understanding of what it going on—unless he intelligently waives the right to have counsel there.

Now, Mr. Greer may not agree with this. The sheriff may not agree with this. But, that is the law. And, unless you have that rule that it had to be an intelligence witness, there wouldn't be any sense in having the rule, because it would become just a mere form if the sheriff could say something to the defendant, and the defendant didn't understand it.

Now, of course, there is a conflict in the evidence here. But, we recognize that it is awfully rare that a man who comes up before a court and says I will confess, but it wasn't true, to have his word taken over the sheriff. And, we are not here to attack Sheriff Coates's character. That's not the reason we came here. But, we do say that Sheriff Coates honestly, in his heart, is fundamentally at odds with the law. He honestly doesn't, we think—we can now get this from the record, that he fundamentally, in his heart, doesn't agree with these decisions. So, what does a man do when he is faced with a decision he doesn't agree with?

The Commonwealth's Attorney made it very plain he doesn't think a thing of these decisions. Now, what do you do when you are faced with the situation. You have got a law. You have got to live with it. But, you don't like it. You pay lip service to it. You memorize something and then you say it.

Now, we don't know what went on in the sheriff's office with the guns and the bullets and everything facing this man. We don't know what was said then. But, the sheriff said he memorized this thing to him. He said he told him four different times—you have a right to an attorney. He told him once at twelve-thirty. He told him again at six. That's twice. He told him again at eight o'clock when the man came in—about eight-thirty to make his statement. He says that time he told him. That makes the third time. Then, he told him the fourth time when the tape was on. And, after being told this four times, the suspect says—"Well, I reckon, don't know about that."

Now, the question is, did the sheriff then inform him of this right to counsel in a way he could understand it. Now, let's look at it—what this confession says, what it says from the tape. It says that "you understand that you have the right to an atorney before you make a statement? You un-understand that? That's right. I reckon. I don't know about that. Now, wait a minute. You have the right to an attorney before you make any statements? You understand that?" He said exactly the same words.

MR. GREER: What was the answer?

MR. MCLAUGHLIN, III: The answer was "Oh, yes." Now, you made that point in your argument. I will get to that in a minute. I am trying to talk about what the Sheriff is doing. Now, he says, "You understand you have to—the right to an attorney before you make this statement? You understand that?" And he expresses some—now, if a man doesn't understand what you say and you say the exact same words to him, how does he understand it anymore? If you have got a man who comes down here from Lynchburg and stays, "I want to get to Sinai, and I want to get to Green's

Folly." And, you say, "You go down this road here 'till you get to Sinai, and you can take a right. Do you understand that?" And, he says, "Well, I reckon. I'm not sure about that." Well, now, you don't say, "Well, you go down to Sinai and you take a right." You don't say that. What you do say is, "Well, you go down here until you get to a little sign that says commercial property, and it's got a Shell station, and in between that Shell station and commercial propefty, then you take a right." That's what you do if you really want to explain to him how to get to Green's Folly. I mean, if you want to explain something to somebody, you say in other words, and you explain it in other words.

And, had the Sheriff really wanted him to understand it, he would have said, "Now, you've got a right to have a lawyer." And, "He knows what the law is, and he knows your rights. He can come down here and advise you what is best for you." But, the Sheriff didn't do that.

Well now why didn't the Sheriff do that? Because the Sheriff feels like that these decisions that are coming down are mighty depressing to him. Now it's very understanding that the Sheriff would feel that way. Of course, he feels that way. It's his job to convict people, and here these decisions come down and say you have got to make this man understand this. And he doesn't like this. And a lot of people don't like it.

Well what the Supreme Court, in essence, has said is—they have said, those of you who are prosecuting people, it's your duty—we invite you to, instead of becoming people who get your evidence to confessions is to channel those energies that you have got, the things that you have learned how to get confessions out of people, and instead of doing that, learn to get objective evidence.

The Commonwealth attorney says if we can't put this confession in, we don't have any case. Well, why don't they

have any case? They say we don't have the bottle. Why? Have they looked for the bottle? Have they had the F.B.I. down? I can't believe that this is just an unsolvable crime without a confession.

And, whether the Supreme Court is right or not, that has been their position—is just relying on confessions makes the police rely on that and not go ahead and look into other things.

And, we submit, your Honor, that the evidence in the trial, regardless of whether the confession is admitted, is going to show that there is very serious doubt about this man's guilt. It's going to show there are some things that just don't fit together and these things should have been invesigated by the police.

Now, it's true the police have got a hard job. They have got limited time. They are overworked. And here you have got a case that's a capital case. And it's a heinous crime, if it is a crime. And, it should be prosecuted vigorously. What happened is they get a confession and they fold their arms. And whether the Supreme Court is right or wrong, the Supreme Court is discouraging this method of getting confessions. And it really is nothing new.

Throughout the history of our law, there has been more and more—even back in old English law where they said you have to have—you have to prove your habeas corpus. This was the beginning of putting limits on what you could get out of a confession.

Now, we are not here saying that this confession is involuntary. Now we have brought in these things about him being sick. We brought in these things about him promising the bond, because these are added things. But our basic point is that this man did not understand; he didn't make any intelligent statement of his right to counsel.

Now, we went through the questioning, and it was the—a little bit confusing. But I think the record shows that the main point is that he didn't understand that he had the right to counsel.

Now, Mr. Greer said in his opening argument that if it was a voluntary confession, it's admissible. That was the law previously. That's no longer the law.

And I would like to quote from the Miranda case on that. In the Miranda case, it says that even that those confessions that they were dealing with would be considered voluntary.

It's true that he called for the Sheriff, but the Miranda case did say that regardless of whether or not this confession is voluntary, if this man didn't make an intelligent waiver of his right to have counsel there, to have a lawyer there; he didn't make an intelligent waiver, and they can't question him at all.

It's just like this man from Chicago that they caught for murdering all the student nurses. They have not even questioned that man for killing all of those nurses. They have not questioned him at all. But they have got the evidence against him.

This is what the Supreme Court has said about this question of intelligent waiver. It goes on to talk about—it says, "This does not mean that the police station must have a station house lawyer present at all times to advise prisoners. It does mean, however, that if police propose to interrogate a person, they must make it known to him that he is entitled to a lawyer. They must make it known to him that he is entitled to a lawyer, and that if he cannot afford one, a lawyer will be provided for him prior to any interrogation. If they don't provide counsel, they can't question him." Now it goes on to make an exception.

It says, "if the interrogation continues without the presence of an attorney, and a statement is taken, they have a

burden that rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against a self incriminating statement in his right to obtain appointed counsel."

Now that is the heart of the reason that this confession is inadmissible. It says the government has a heavy burden to demonstrate that the defendant knowingly and intelligently waived his privileges against self incrimination. Well, there is no argument there but that his rights of appointed counsel—and, it says that this Court has always set high standards of proof for the waiver of constitutional rights, and we reassert these standards as applied to in custody interrogation. In other words, that means they put him in here in this Sheriff's room. This man is looking at all these scary pictures of all these people on the wall, and they have got him in there. And, they are responsible for having him there. It says since they are responsible for that for establishing the isolated circumstances as applied in custody, the isolated circumstances under which the interrogation takes place and have the only means of making available corroborating evidence of warnings given to him incommunicado. The burden is right on the Sheriff, and they had the opportunity when they had him there at twelve-thirty to get a tape recorder on at that time. It's not any harder to cut it on at twelve-thirty than it is to cut it on at eight o'clock after you have had him all primed and ready to talk. They could have cut it on at twelve-thirty. They could have made it clear on that tape that he understood his right to counsel. But, it wasn't done. An expressed statement that the individual is willing to make a statement and does not want an attorney. This man never said I don't want an attorney or lawyer. Followed closely by a statement could constitute a waiver, but a valid waiver will not be presumed simply from the silence of the accused after warnings are given.

Now, that's what we've got here. That silence of the accused after warnings are given. He doesn't say—well, he wants a lawyer. He said finally, "I understand. Oh, yes."

But,—or simply from the fact that the confession was in fact eventually obtained. In Conner versus Cockran a statement is applicable here. "Presuming waiver from the silence is not permissible." Now we are talking about what happened at twelve o'clock. The record must show that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not worth it.

Now the Sheriff never asked him, do you want a lawyer? He just said, you've got a right, a right to it. Moreover, when an in custody interrogation is involved, there is no room for the contingency that the privileges waived of the individual—let's see. "Whatever the testimony of the authorities as to the rights of the accused, the fact of lengthy communication or incommunicado incarceration before a statement is made is strong evidence that the accused did not validly waive his rights. And the circumstances, the fact that the individual eventually made a statement is consistent with the conclusion that the impelling influence of the interrogation finally forced him to do something that is inconsistent with any notion of voluntary relinquishment of the prisoner involving any aspect that the accused was tricked into a waiver."

Well, certainly the accused did not voluntarily waive his privileges. Now, there is some conflict in the evidence here. It's here in the record at the preliminary hearing the Sheriff told this man— the Sheriff testified he hold this man he was a friend of his family. It was in the record at the preliminary hearing and he didn't remember. He didn't know whether or not he promised bond. It was also in the record that he even said—he also says now that he doesn't know

whether he called the father and told the father exactly what the father says he called him and says you can come get him, that he did say well, now you can get the bond if you tell the confession. It is also in the evidence and is not—in my understanding, I may be wrong in this. But, I don't think the Sheriff has denied this, that Bedford Satterfield said he came in and the Sheriff said, "I'd rather you didn't take him out on bond."

Now, in the context of the Miranda case, this is incommunicado incarceration. The Sheriff didn't want this man out on bond. He wanted to get that confession from him. Now, there is nothing wrong with him wanting that. There is nothing wrong with him wanting that. But, the truth of the matter is what the Sheriff believed to be what he could get by with and what he couldn't get by with were just two different things.

Under this Miranda case, if this Miranda case applies, his confession is not admissible. I think Mr. Greer indicates his confession is admissible, because it's a heinous crime. It's a bad thing for society not to have this confession.

The law here is plain. Now, I would like to go in for just a second the fact that this Miranda case applies to this confession. The Miranda case came down, I believe—I think it was June the 13th. Two days later, the court came down in the case of Johnson versus the United States—the United States versus Johnson, and in that case, they stated in that case—I can't find it in the reports. It may be in the loose leaf. but we have that case in "The Law Week", and it's 34 Law Week 4597—now, I don't know whether it's been reported or what else, but in that case the Supreme Court confronted and very precisely laid down whether or not the decisions were retroactive with respect and they said the Miranda case would apply to any defendant whose trial began after the Miranda case was handed down on June the 13th.

Now in this case, the preliminary hearing was on June the 24th. So there is not any question but what this case began after the Miranda case was handed down. And, therefore the Miranda case must be applied.

Now the only case since then is in the Fifth Circuit which is—I understand this is Mississippi and Alabama and so forth. And in the Fifth Circuit Court of—no, I think it's the Appeals Court and the Court of Appeals at the Fifth Circuit, it was held that the rules in the Miranda case apply to a retrial. In other words, in that case, the name of that case is Gibson versus United States. That case came down the 13th day of this month—July the 13th. And that case held that the Miranda case—the rules put forth and the procedures they have got said this Miranda case had to apply to a trial which was a retrial. The man had been tried. The confession had been made and the man had been tried. And, finally they had to declare some kind of mistrial for some reason. And, then they went back and started a new trial, and they said that the guidelines suggested by the Chief Justice was not available at the time of trial; "We see no reason why this principle should not be applied." Let's see —now, we are talking about a trial that didn't originate until after June 13th. And the Miranda case has got to be applied to this case. And if the Miranda case has to be followed, then—like I say, this man was not—the preliminary hearing was June 24th. He was indicted on July 18th. And, he is tried on July 29th. So, all parts of the trial were held after this Miranda case.

So to go over once more that under this Miranda case, this confession is not admissible. It's a burden on the government—in this case on the Commonwealth to prove that this man understood his rights.

Now we asked the Sheriff a question—how do you know he understands his rights? How do you know he understands

them? How do you know he understands them when you said attorney? He says, "Well, I asked him. I asked him does he understand." He said he didn't understand them. He said, "Well, I told him again." And, I asked Mr. Coates, I said, "Mr. Coates, why didn't you use other words?" And, Mr. Coates said, "I used the same words." Well, we know why he didn't use different words. It's because he thought that all he had to do was to go along and question people the way he has always questioned them without brutality, without beating anybody. And, as long as it was a voluntary confession, all he had to do was say you have got a right to an attorney—something he memorized. Just like he memorized "Oh yea, oh yea, oh yea." He memorizes this thing. You have got a right to an attorney. He doesn't say you have got a right of advice to an attorney. He doesn't say you have the right of advice to counsel which is the less technical word. He doesn't say you have a right to a lawyer which is a word that means more to people. You have got somebody here with a sixth grade education. And, the Sheriff says you have got a right to an attorney. The man indicates he doesn't understand. He tells him the exact same words again. Now, if he didn't understand it before, how come he understood the second time? The man says oh, yes.

But, does that sustain the burden, Your Honor? Does that sustain the burden on the Commonwealth to prove that he really did understand it? Now, he testifies he didn't. Well, maybe his testimony isn't worthy of belief. All we can do is put him on to tell his side of the story. But, whether he did or not, my point is the Sheriff didn't go far enough to make this man understand. And, I don't think it has been proven that this man really understood that he had a right to a lawyer. He didn't really understand it. Even if he did understand, he didn't indicate that he was rejecting the right to an attorney.

And, the Miranda case does say he has got to reject it. He's got to waive it. He's got to make some indication he waives it. And, he didn't do that in any of that. And, certainly it looks to me—the evidence indicates he never really understood what the Sheriff was talking about. And, the evidence shows this man has got an I.Q. of 67 and is mentally deficient. And, there just isn't any question that he is mentally deficient.

The Sheriff had some dealings with him before. He knew he had been arrested for larceny. He said himself it was a very foolish crime. And, the Sheriff said he didn't know his educational level.

Now, the Sheriff went in there—he went in there and asked the man, he said, "What about that poison in the beans?" He says the man said, "Well, no, it wasn't put in the beans. It was put in something else." Now, our theory of this case, your Honor, is that this did not prove his guilt, because our theory is that this defendant knew that those beans had been fed to the dogs, and those dogs didn't die. He also knew that this child died of poisoning, because the sheriff had told him so.

So, the logical thing for him to say is no, it wasn't put in the beans. It was put in something else, because he knew it wasn't put in the beans. It must have been put in something else. And, we say this does not necessarily show his guilt.

But, the important thing here is that the sheriff thought it did show his guilt. Now, if the sheriff thought it showed his guilt, it must show that he was of the opinion that this was a pretty stupid man, because it was a pretty stupid answer to make. A man that's got cunning, he doesn't start by saying it wasn't put in the beans. It was put in something else. The sheriff must have thought that this man wasn't too

smart or he wouldn't have picked it up. He wouldn't have thought this man is guilty, because it's not very much gall involved when a man makes that kind of an answer.

What we are basically saying is that far from being frivolous and petty, that if we accept the law as it is written regardless of what our opinions are—if we accept the law as it is written and believe that the law transcends our opinion of it, and it transcends this case, then the law says that you have not only got to tell him but you have got to make him understand it. And, then if he understands it, he has got to give up that right.

And, it's not frivolous to say that if you've got a law that makes you tell a man that he's got the right to counsel that you have also got to make him understand it. I mean, the form is no good if it doesn't have substance. And, really this goes to the heart. If you accept the fact that you've got to tell him that you have got a right to a lawyer, then it's not frivolous. You are not talking about what words. It's a matter of the heart of protection of that requirement. You've got to make him understand.

Now, we don't suggest that the sheriff has got to be a psychiatrist. But, here he has some indication. He has some indication from the questioning of this man that he wasn't dealing with a very intelligent man. And, in fact, he wasn't. He had some dealings with him before. He had come in and admitted what the sheriff thought was a stupid sort of admission indicating he was guilty. And, he says you've got—after the fourth time, the fourth time he advised him, he said he had memorized to this man—the man says I reckon. I don't know about that.

The sheriff had reason to believe then that this man didn't know what he was talking about. And, he at that point should have explained to him what he was talking about. And, he didn't do it, because he didn't want the man

to clear him up. I mean, that's the truth. You can't beat the truth. And, that's what happened. The sheriff didn't want him to clear him up. So, he didn't explain it to him. It's inadmissible. He's got to do it. The case here says he's got to do it.

This man's got to make an intelligent waiver, and they have got to make him understand. And, if you take the law as it's written, this confession is inadmissible.

MR. GREER: As I said before, your Honor, the circumstances surrounding the taking of this confession, the sheriff touched all the bases. And, by saying that I meant he complied with all of the constitutional requirements including that abominable decision known as Miranda, and because I don't like that decision doesn't mean that I don't understand that decision. It doesn't mean I don't know what that decision says.

But, one thing that decision says after some sixty-three pages, somewhere along in there it says that we are not saying that voluntary statements are inadmissible, and we are not interfering with the regular routine police procedure in this country.

Now, in this particular case that we have here today, this Sheriff had gone home, and this man sent for him. Says I want to see, I want to talk to you. Miranda decision never says nowhere that the Sheriff has got to close his ears and put on ear muffs and not listen to a person who wants to talk. This man wanted to talk.

And, of course, we didn't know about Miranda last January the 19th when this procedure was—when this statement was taken. The law in Virginia—the most recent case on a confession was the Bittle case that arose out of Norfolk. You remember about that case? It was a little child who died of malnutrition, and they sent for the parents

after the autopsy was taken and said come down here and let us talk to you about this matter. And, so the mother comes down and they talk to her, and they don't advise her of anything. But, the Supreme Court of Virginia says that she made a completely voluntary statement. And, so it was admissible. And, they went into the Escobedo situation as you know. So, the failure of an officer to warn a person that he may remain silent does not remedy a voluntary confession inadmissible. I am just showing you to what lengths we are going in the law.

This decision was April the 26th, 1965. Miranda was June the 13th, 1966. This statement was taken January the 19th, 1966. But, even so, Your Honor, Miranda doesn't eliminate this statement. This thing was completely voluntary.

Now, this thing of a sixth grade education—never let it get out that a sixth grade education is a work sight. Most of the people in this country that are living today have only a sixth or seventh grade education. All it takes to get in the army is the equivalent of a fourth grade education. And, that's today. Of course, we do have illiterate people in the army. This man is thirty-three years old, I believe he said.

MR. MCLAUGHLIN, JR.: No, twenty-three.

MR. GREER: Twenty-three. And, they say he has worked at J. P. Stevens for three years, and to say he is so illiterate, so dumb that he didn't know what was going on is absurd. And, of course, he would like to change it. He would like to change it. But, he made a full and free and voluntary confession. And he's stuck with it.

MR. MCLAUGHLIN, III: May we be heard further, Your Honor?

THE COURT: It's Mr. Green's statement now and if he's through. What did you want to say?

MR. MCLAUGHLIN, III: We want to clear up this question of voluntary and involuntary. Mr. Greer's point is that this confession is voluntary, and in Miranda, the court says —they are talking about the cases in Miranda which they held to be involuntary. And, in your edition, it's 16 Lawyers Edition 2d 694, page 713, and the court says, "In the cases we might not find the defendant's statement to have been involuntary in traditional terms. Our concern for adequate safeguard is to protect fifth amendment rights is, of course, not lessened in the slightest." And, it went on to say that despite the fact that they said here that these confessions were voluntary, they were made in the Miranda case. But, the man didn't waive his right to counsel. And, that's the crucial question. And, what the Virginia courts decided before the Miranda court decision came down might be better reason—might be better logic. But, the Miranda case is law. And, it's the law that applies to this case. Mr. Greer doesn't deny that.

But, the fact that this confession was voluntary does not make it admissible. It doesn't make it admissible. They have got to inform him of his right and he has got to understand it. He's got to waive his right, and if that isn't accomplished, why—then, they have got to have a lawyer there or they are not allowed to question him at all.

Now, Mr. Greer makes the point that he came and called the Sheriff and said, "I want to talk to you." But, the Miranda case says you can't talk to him at all. You couldn't talk to him at twelve-thirty. You can't talk to him at six o'clock. You can't talk to him at eight o'clock. You've got to make it clear to him that he has got a right to counsel. He's got to reject that right. He's got to waive that right before you can question him at all.

So, the fact that he later makes a confession, the fact that he later calls the Sheriff back sitting in the jail, that doesn't make the confession admissible. It may be voluntary in the sense that this man's will wasn't overborne. But, he did not do it with knowledge of his rights that he had a right to counsel if he had not waived that right. And, if a lawyer had been there, he would have been able to advise him. But, he wasn't there.

This thing was incommunicado. And, they did not fulfill the requirements of the Miranda case. And, like it or not, that's the law. And, this confession is inadmissible.

Thank you, sir.

MR. MCLAUGHLIN, JR.: I want to to remind the Court—I think the Court will remember that this boy when asked about his grades, he said, "I made all A's for six years in conduct, but I made all F's in everything else." And, this very thing of trying to forge this check even though it was two different handwritings. One endorsement and one signed to the check. That, in itself, Mr. Coates should recognize the man's mental deficiency. To think he would ever get away with it is certainly indication of the inconsequential mind it was not very bright.

And, I'm not going into the law on the thing. I think Henry has very well established that. And, I think the Court is very keenly aware of what we must do whether we want to or not in many cases. But, in this particular case, the confession is not admissible. I don't think I can add anymore to that.

MR. GREER: Your Honor, I'm not going to say but one thing. I just want to make an observation. Have you ever been in a meeting where the chairman and the people in the meeting were so involved with parliamentary procedures that they couldn't get anything done? Well, that's what we are faced with in these cases now.

I ask Your Honor to rule on the admissibility of this confession so that we can either go home or continue the trial.

The Court's ruling and exception by counsel for the petitioner are set forth below:

[TR. PP. 222-223]

THE COURT: The matter has been well argued and presented to the Court. At the time the statement was taken, of course, they were holding the Miranda case. And, I believe all the rules and requirements were met by the Sheriff as far as he was concerned in advising and warning the man. Everybody agrees, I suppose, it was voluntary, because the Sheriff started talking to him about six-thirty, and the man didn't talk. So, he stopped at that time and he told him if he did want to talk anymore to let him know. And the Sheriff was called and he came back. And the man gave him the statement.

So I think that is certainly voluntary as far as that goes without any question. Now, as to the advising the man to an attorney, I think that the requirements were met. I think the gentleman must have understood what an attorney was. It's true that practically everybody refers to representatives as a lawyer. There may be some as attorneys, but I think they all know that the term is used synonymously I think. And they understand what it means.

So I think under the circumstances in this case that the Miranda case is met in the spirit at least. And I think we should allow the statement to go in evidence. That will be the ruling of the Court. Of course, you all want to save your point on that.

MR. MCLAUGHLIN, III: We except to the ruling of the Court in order to save the point.

* * *

After the jury was brought back, counsel for the petitioner again excepted to the admission of the confession into evidence; subsequently, certain testimony was heard after which counsel for the petitioner renewed its motion for exclusion of the confession from evidence, all of which is shown by the portion of the Record set forth below:

[TR. PP. 224-245]

MR. GREER: I would like to call Sheriff C. T. Coates.

C. T. Coates

introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GREER:

Q Sheriff, I believe about three hours ago you stated your name and occupation, and I asked you if you had had occasion to investigate the offense for which we are trying here today, and you said yes. When was the defendant arrested?

A January 19th, 1966.

Q Tell us the circumstances concerning his arrest please, sir, if you will?

A Well, on the night of January 18th, Doctor Wooding called me and advised me that this child, Brenner child had died of arsenic poisoning. And, the next morning, I went to start the investigation. I went up to Turbeville to the home of Franklin Satterfield. I brought his wife down to the office to talk with me.

And, I had talked with her in the office a little while, I brought her over to your office. In the meantime, Wallace Franklin Satterfield came to my office. When I finished over here, I went back over there. And, he was there.

I talked to him in my office there for a little while, and Doctor Wooding had indicated to me that this poisoning was placed in some beans. And, I questioned him about the beans. And, he made the statement, he said, "No. The poison was not put in the beans, but put in something else."—or something to that effect he said. And, he didn't explain what it was in. He didn't say. That's all he would tell me.

Q Had he been arrested at that time?

A No. But, he was arrested after that and placed in jail at twelve-forty on January the 19th. And around six-thirty or seven o'clock that night, I took him back up into my office and talked to him some more. We had made arrangements to take him to Appomattox the next morning to take what we know as a lie detector test.

And I talked to him about six-thirty or seven o'clock that night. And he didn't tell me anything. And I placed him back in jail. I told him, I said, "Well now, Frank, if you want to tell me anything, I'm going to be at home. You get the jailer or one of the deputies to call me, and I will come back." Well, I hadn't been at home over fifteen minutes when the Deputy called me and said that Frank Satterfield wanted to talk to me.

Well, I came back to the office. Two of the Deputies, Roy Pruitt and Monroe Anderson, was at the office. I told them to get Frank Satterfield out of the jail and bring him up to my office and see what he had on his mind. They brought him up to my office, and he sat down and gave me a statement as to what he did in the crime.

Q When you talked to him earlier in the day, did you advise him of his constitutional rights?

A I did.

Q When you talked to him around six-thirty, did you advise him of his constitutional rights?

A I did.

Q When you talked to him there about eight-fifteen, was he advised of his constitutional rights?

A Yes. He was.

Q Would you tell us—let me ask you this. This statement was it taken down on a tape recorder?

A Yes.

Q And, was it later transcribed?

A Yes.

Q When was it typed up?

A The next day, January the 20th. And, he signed it.

Q And, who was present when he signed it?

A Monroe Anderson, Roy Pruitt, and myself.

Q And, Monroe Anderson and Roy Pruitt were also present when the statement was given the night before?

A That's right.

Q All right, sir. Would you read the statement, please sir?

MR. MCLAUGHLIN, III: If your Honor please, at this time, I simply want to make it very clear that counsel for defense makes exception to the statement Mr. Coates is about to make.

THE COURT: Yes, sir. It's understood.

BY MR. GREER: (Continuing)

Q All right.

A The statement was taken starting at eight-fifteen p.m. at the sheriff's office in Halifax on January the 19th.

"Question: What is your name? Answer: Wallace Franklin Satterfield. Question: How old are you, Franklin? Answer: Twenty-three. Question: Do you know who I am? Answer Yes. Question: You know I am the sheriff? Answer: That's right. Question: You understand, Frank, that you don't have to make any statement if you don't want to? You understand that? Answer: Yes. Question: You understand that any statement you make can be used against you in court? You understand that? Answer: Yes. Question: You understand that you have the right to an attorney before you make a statement? You understand? Answer: That's right. I reckon. I don't know about that. Question: Now, wait a minute. You have the right to an attorney before you make any statements. You understand that? Answer: Oh, yes. Question: All right. Now, nobody has promised you anything? Answer: No. Question: Nobody has promised you any favors of any kind, made no threats towards you? Answer: No. Question: Are you making this statament of your own free will? Answer: Yes. Question: All right. Now, Frank, on December the 21st, tell me what happened? Answer: Well, she kept"—and I interrupted him.

Question: Who now? Answer: My lady. Question: Your wife? Answer: My wife kept raising hell about some rats around there so I decided I would go over to the drug store and get something and see if I could get rid of them. I went and got some poison and come back. Put some out. And, I took a drink and poured some of the poison over in that. Question: Now, where was the drink? Answer: In the refrigerator. Question: What kind of drink was it? Answer: A Diet-Rite Cola. Question: It was in the refrigerator? Answer: That's

right. Question: Now, your wife said, Frank, it hadn't been any rat poison in that house. Did she know you was doing that? Answer: No. She didn't know. Question: She didn't know you had put out any? Answer: No. I told her when I come back that night I'd done put out some. And, she told me they were sick. Question: I know, but she said it hadn't been no rat poison in the house, Frank? Answer: I know it. She didn't know it was in there. Question: She didn't know it was in there? Answer: No. Question: She didn't know you had done anything? Answer: No, not that. Question: All right, now. Why did you put it in the Diet-Rite Cola? Answer: I don't know. Question: Well, now what was the purpose of putting it in there? Just tell me the truth about it? Answer: No certain reason. Question: You put it in there so they would drink it didn't you? Answer: No. I didn't want them to drink it. I just put it in there. Question: Well, why did you put it in there? Answer: I don't know. Question: Now, Frank, it wasn't but one reason you put this stuff in there and that was to get them to drink it and kill them. Now, isn't that why you put it in there? Answer: Yes. Question: What did you say? Answer Yes. Question: Now, why did you want to get rid of them, Frank? Answer: So I could collect part of the insurance. Question: You had just taken out insurance—an insurance policy on your wife for three thousand dollars ($3,000.00) hadn't you? Answer: Yes. Question: About two weeks before that? Answer: Two or three. Question: And, you had an insurance policy on all the children didn't you? Answer: Yes. Question: And, after you put it in there, what did you do, Frank? Answer: I just put it in there and put the top back on

it, and I went on to work: Question: Okay. You got to work. You go to work about four? Answer: That's right. Question: What time of day was it when you put it in there? Answer: Around twelve-thirty. Question: Did you put the whole bottle of rat poison in there? Answer: No, sir. Question: How much was left in the bottle? Answer: About half of it. Question: Where did you get the poison, Frank? Answer: From Faulkner Lawson's. Question: Falkner Lawson's was a drug store? Answer: That's right. Question: Did you get it that day? Answer: No. I had been had it. Put some out for some rats and killed a few if it's any around there. Question: Now, wait a minute. Your wife said it hadn't ever been no rat poison in the house? Answer: I had it in my pocket, but she didn't know I had it in the closet. Question: You told me today you kept it in the car? Answer: I did. I kept it in my car and kept it locked at all time. Question: All right. You got it at Faulkner Lawson's drug store. What did you do with the bottle after you put it in the Diet-Rite Cola? Answer: I put some in the closet and I throwed it in the trash can out there beside the house. Question: Now, what do you mean you put some in the closet? Answer: For some rats. Question: Your wife said it hadn't been none in the house, Frank? Answer: She didn't know I put it in there. Question: Whereabouts in the closet did you put it? Answer: I just sat it up against back in the corner there where the rats been running. Question: Did you put it on something or what? Answer: I just sat it down on the floor and shut the door. Put a nail up in there so nobody couldn't get in there. Question: All right. How many of your folks got sick that night from drinking this Diet-Rite Cola, Frank? Answer:

One of the kids, two of the kids, and my wife. Question: Did one of your kids die? Answer: That's right. Question: The doctor said it died from arsenic poisoning. Did the rat poison you had have arsenic in it? Answer: I don't know. Question: Would you know it if you saw a bottle like it? Answer: Yes, sir. Question: Could you go down to Faulkner Lawson's and pick up a bottle like you bought? Answer: If they ain't done sold out I can. Question: What was the name of it? Do you know? Answer: No. I don't know. It was a bottle about that high, about six inches high. Might have been a little higher. Question: Now, Frank, this child that died, Jeffrey Ronald Brenner, was that your child? Answer: No, sir. Question: Your wife—that was an illegitimate child by your wife before you married her wasn't it? Answer: That's right. Question: But, the child had lived with you all ever since you married her? Answer: That's right. I bought him everything he eat and drank and hospital bills. Question: Now, Frank, have you told me the truth about this thing? Answer: That's right. Question: The whole truth? Answer: Well, I didn't give it to her. I just put it in the refrigerator. She gave it to him. Question: Well, I don't doubt that at all. We haven't accused you of giving it to her. You said you put it in the Diet-Rite Cola but you didn't tell her nothing about putting it in there did you? Answer: No. Question: You put it in there for the purpose of wiping them out to collect the insurance? That's what you just told me. Is that right? Answer: That's right. Question: All right. Is there anything else you want to say about it, Frank? Answer: No. I don't reckon it is. Question: Now, Frank, who is in here listening to you while you make this statement

besides myself? Answer: Roy Pruitt and I don't know him. Question: Roy Pruitt and Monroe Anderson. Both of them are Deputy Sheriffs. Both of them have on uniforms. Correct? Answer: That's right. Question: All right. You have given the statement of your own free will and accord? Answer: That's right."

Q Now, Sheriff, was this statement you just read signed by the defendant?

A Yes, sir. It is.

Q When did he sign it?

A The next day, January 20th, as soon as we could get it transcribed.

Q Who was present when he signed it?

A Monroe Anderson, Roy Pruitt and myself.

Q Now, at either time, that night or the next day, did the defendant complain to you about being sick?

A No. I tell you what the trouble with Frank was. He was just as normal as anybody until some of his people came down. And when he had to confront his people, he would get nervous. Now, that's why they thought he was sick. Frank wasn't sick.

Q Sheriff, did you try to get the defendant to identify the type of rat poison that he said he bought at Faulkner Lawson?

A Yes, sir.

Q Tell us about that please?

A We took him—he described that bottle which we found it like that over there, but he denied that that was the kind.

Q How did he describe it?

A He said about six inches high or a little higher. And I measured the bottle this morning. It's six and a half inches high.

Q Did he describe the color of the liquid?

A Yes. He said it was a liquid in a milky form, a white form.

CROSS EXAMINATION

BY MR. MCLAUGHLIN, III:

Q Sheriff Coates, you said the only reason Frank got sick was because his people was there. That's not a professional opinion?

A That's my observation.

Q Didn't some of his family ask you to get a doctor for him?

A I don't recall them asking about a doctor.

Q But, you do remember he began to get—look sick when his family was there?

A I didn't say he began to look sick. I said he got nervous whenever they came.

Q Well, do you know the difference between being nervous and being sick?

A Well, I've been both. It's right much difference.

Q Well, did you tell Frank Satterfield that if he confessed he would get out on bond?

A No, sir.

Q Isn't it a fact that in the preliminary hearing you asked the—answered the question in the preliminary hearing of the case on June 24th, 1966, that you testified and the court-reporter was here and took down everything you said.

And, you were asked, did you tell him if he made a confession he could get out on bond? And, your answer was, I do not know.

A I didn't say that.

Q You didn't say that?

A No, sir.

Q And, if the court-reporter says this is her remembrance of what she put down, would you say she made a mistake?

A Well, she bound to have made a mistake, because I didn't say that. I've never said I promised him bond if he confessed.

Q I didn't ask you if you said you promised him. I said you said you didn't say you didn't know whether you did or not. What I am saying is, you didn't know whether you told him that or not?

A No. I didn't say that.

Q And, if she testifies that that is what she took down, then you say she would be wrong?

A She would be mistaken.

Q Mistaken?

A Yes.

Q Well, now, didn't you call Mr. Bedford Satterfield, Frank's father, immediately after he made the statement to you that he had confessed and he could go home?

A He asked me to call his daddy, and I called his daddy. I didn't say he could come and get him. I didn't tell him anything about coming and getting him. He knew he could come and get him anytime he wanted to. Bond had already been set.

Q Mr. Bedford Satterfield testified that you called him up and said that the boy had confessed and you could come get him now, he would be mistaken too,

A I didn't say that.

Q If he were to testify that, he would be mistaken?

A That's right.

Q Didn't Sam Rogers come to you the next morning and tell you he thought the boy was sick and should have a doctor?

A I don't recall him saying that.

Q But, you wouldn't deny he said that?

A I don't remember.

Q Did you tell Frank Satterfield you were a good friend of his uncle, Ed Satterfield, who had worked as a deputy sheriff in years back, and a good friend of Mr. Thomas Bass, who was a relative of his, and a good friend of his family during the time you questioned him?

A No.

Q You didn't tell him that?

A No.

Q And, if Mrs. Abbott, the court-reporter, testified that on June the 24th, 1966, you were asked that question and you said, "I do not know whether I told him or not, but it's the truth in substance. It's the truth I am a friend of theirs." Then pursuing this, the question, "Isn't it a fact that you told him that?" And, you said, "Yes." Would she be wrong?

A That's right. You asked me the question at the preliminary hearing if I was a friend of them, and I answered yes, I was a friend of them. But, I never made any such statement to the man while I was questioning him.

Q Now, let me quote to you something and you tell me whether this is the way it was. "Question: Had you told Frank Satterfield that you were a good friend of his uncle, Ed Satterfield, who worked as deputy sheriff for you in years past, and a good friend of Mr. Thomas Bass and a good friend of his family during the time you questioned Frank? Answer: I do not know whether I told him or not. He knew that." Now, this bears out what you have said. "Now, is that true? Answer: It's true I am a friend of theirs." Again bearing out what you said. And then, "Question: Did you not tell him that on the night of January 19th around something after eight o'clock or did you tell him before? Answer: I do not know when I told him. Question: But, you did tell him? Answer: Yes."

A What I told him and what he told me . . .

Q Excuse me, Mr. Coates. What I want to know is is this correct?

A I haven't told him that in the period of questioning him, no.

Q What I am asking you in the preliminary hearing, is this a correct reproduction of what you said?

A You've got it so jungled up there. In reply to your question when you asked me if I was their friend, I told you yes here in court. But, I haven't said that to Franklin Satterfield in the course of investigation.

Q That wasn't what I asked you. But, you—it went on to say, "Didn't you tell Frank this that night?" And, the answer was yes. Isn't that correct?

A No.

Q It wasn't, and Mrs. Abbott has got it down that way, and then she is wrong?

A That wasn't mentioned that night, nothing about that was mentioned that night.

Q But, now if Mrs. Abbott has got it down there that you testified it was mentioned, she would be mistaken?

A I didn't say it.

Q I want to get a direct answer to this question what was said at the preliminary hearing. If Mrs. Abbott were to testify you said it and she wrote it down just as I read it to you which came out in the final thing, "Yes. I did tell him," she would be mistaken?

A Well, you read that again. You've got it jungled up there two or three times.

Q All right. I will read it to you in sequence. What happened in substance was you were asked about it, and your answer was, "Well, I am their friend." And, then you asked, "Didn't you tell him that?" And, the answer was, "Yes."

A No.

Q That didn't happen?

A No.

Q Now, sheriff, before you talked to Frank Satterfield, you had made an investigation of this case, hadn't you?

A Before I talked to him?

Q Before you talked to Frank Satterfield, you had done some checking around hadn't you?

A No. I hadn't said anything. I had asked his wife a few questions.

Q You had asked his wife some questions?

A That's right.

Q You found out from his wife he had some insurance?

A No. Insurance wasn't mentioned. It was mentioned, I believe, in the Commonwealth attorney's office.

Q That occurred before you talked to Frank Satterfield?

A That's right.

Q She said something about insurance then?

A I'm not sure of that. I'd have to read this thing and see.

Q It's her voluntary statement?

A That's right. Yeah, it was mentioned in here.

Q So, you knew something about some insurance before you talked to Frank?

A Yeah, that's right.

Q Now, I want—I don't want the jury to get the wrong impression now. You indicated that you spoke to him at twelve-thirty and he said—he made sort of a damaging statement in saying it wasn't put in the beans. It was put in something else. Or something to that effect. And, then you said you talked to him again at six-thirty, and he didn't say anything. He didn't want to talk to you.

A No.

Q Now, didn't you ask him a whole lot of questions in the morning or did you just say nothing or leave him alone? Didn't you go and ask him some questions to find out what went on?

A Well, he had agreed like I told you to go take the polygraph test or lie detector test to eliminate himself or involve himself whichever the case may be. And, I asked him that night around six o'clock if he still wanted to take the test or if he wanted to tell me anything he hadn't told

me. And, I advised him if he had anything to hide, it would be my advice for him not to take the lie detector test, because it would bring it out. If he had nothing to hide, then the thing for him to do, it would eliminate him just as well as it would involve him.

Q Now, Mr. Sheriff, Mr. Coates, excuse me. When this happened, of course, you knew he could always say well, I don't want to take a lie detector test?

A That's right.

Q If he done that, I mean you wouldn't have any evidence there one way or the other. And, so why didn't you ask him some questions then during that day to find out something in case he decided—excuse me. You didn't know then he was going to give you a statement of confession? You didn't know then that he wouldn't revoke according to the lie detector test? Didn't you ask him a whole lot of questions during the day?

A Not a whole lot of questions.

Q You asked him some didn't you?

A I asked him some.

Q What questions did you ask?

A I don't know.

Q You don't remember anything about that?

A I remember about it, but I don't remember the exact questions.

Q You remember exactly what you told him about the polygraph test?

A Yeah.

Q But, you don't remember what questions you asked?

A No.

Q Did you ask him anything about whether he had bought any poison?

A Whether he did what?

Q Whether he bought any poison?

A Well, I told you where he said he bought the poison.

Q I'm talking about what you asked him during the day?

A I don't remember whether I asked him about that before. He wouldn't tell me anything. He wouldn't cooperate.

Q Didn't want to talk to you?

A No.

Q Didn't want to talk to you?

A No. And, I didn't talk to him.

MR. MCLAUGHLIN, III: Your Honor, we renew our motion.

THE COURT: Well, you can save your point on that.

MR. MCLAUGHLIN, III: We note our exception.

* * *

At the conclusion of all of the evidence, counsel for the petitioner moved for a mistrial on the grounds that the admission of the confession into evidence had been prejudicial error; this motion was overruled and exception was taken, as set forth below:

[TR. PP. 455-456]

NOTE: The Court retired to Chambers to discuss instructions with counsel and the court-reporter present.

MR. MCLAUGHLIN, JR.: I'm not too familiar with the procedures of the Federal courts, and I don't know—I hope if they need anything after today, but I do feel that we should make every effort in the proceedings necessary to make all proper motions.

I would like to now make the motion that there be a mistrial of this case because of the admission of the confession which Sheriff Coates put in evidence. I have already had one exception to that.

THE COURT: I think the record is clear on that.

MR. MCLAUGHLIN, JR.: I want to be sure.

MR. MCLAUGHLIN, III: Uh-huh. I guess we have to get a ruling on it. We have to get a rule on the motion for mistrial.

THE COURT: Well, I have overruled the motion. I think it's already in the record.

MR. MCLAUGHLIN, JR.: I'd like to save the point.

On July 30, 1966, after the jury found the petitioner guilty of murder in the first degree, counsel for the petitioner moved the Court to set aside the verdict, argument on this motion being deferred, as set forth below:

[TR. P. 462]

MR. MCLAUGHLIN, JR.: If the Court please, counsel for Franklin Wallace Satterfield, hereby moves the Court to set aside the verdict of the jury on the grounds that it is contrary to the law and the evidence, and on the second ground that there was an error committed in the admission of the confession of the accused, Franklin Wallace Satterfield, and on the further grounds that the Court did not accept the

motion of counsel for the defense for a mistrial in this case. On those three grounds, sir.

THE COURT: Now, do you care to be heard on that? Would you like to argue that?

MR. MCLAUGHLIN, III: Your Honor, we would like to get the record done.

On October 8, 1966, counsel for the petitioner moved that the verdict of the jury be set aside and a new trial granted on the grounds that the requirements of Miranda *had not been proved to have been complied with. The substance of this motion was summarized in a statement certified by the Circuit Court of Halifax County and filed in the Clerk's Office of that Court, as set forth below;*

[R. PP. 40-42]*

STATEMENT OF MOTION AND OTHER INCIDENTS OF THE ABOVE WHEN HEARD ON OCTOBER 8, 1966 BEFORE HONORABLE G. E. MITCHELL, JR., JUDGE; NO COURT REPORTER BEING PRESENT

APPEARANCES:

J. WILLARD GREER, ESQUIRE, of Halifax, Virginia, Attorney for the Commonwealth;

HENRY W. MCLAUGHLIN, JR., ESQUIRE, and HENRY W. MCLAUGHLIN, III, ESQUIRE, of MCLAUGHLIN & MCLAUGHLIN, Attorneys at Law, Court House Square, Halifax, Virginia, Counsel for the Defendant.

---

* All of the record to the proceedings in The Circuit Court of Halifax County and The Supreme Court of Appeals of Virginia, except the transcript of the trial on the 29th and 30th of July, 1966, are designated by the letter "R" followed by the appropriate page number.

At a hearing held in the Courthouse at Halifax, Virginia before the Honorable G. E. Mitchell, Jr., Judge, the defendant, Wallace Franklin Satterfield, by counsel, moved the Court to set aside the verdict of the jury finding the defendant guilty of first degree murder in the death of Jeffrey Ronald Brenner and sentencing the defendant to forty years imprisonment and to grant a new trial on the grounds that the Court erred in allowing into evidence before the jury testimony by C. T. Coates, Sheriff of Halifax County, of statements made by the defendant while in the custody of police authorities beginning at approximately 8:15 o'clock p.m. on the night of January 19, 1966. Counsel for the defendant in support of the aforesaid motion argued that the aforesaid statements made by the defendant, which constituted a confession of guilt, should not have been admitted before the jury on the grounds that the defendant's constitutional rights were violated as set forth in the case of *Miranda* v. *Arizona*, 16 L. ed. 2d 694 (June 13, 1966), and submitted oral argument in a written brief in support thereof.

J. Willard Greer, Esquire, attorney for the Commonwealth, argued in opposition to the aforesaid motion.

At the conclusion of the argument the Court did not immediately rule upon the aforesaid motion but rather took that motion under advisement until October 10, 1966 at which time the Court overruled all motions made by counsel for the defendant and entered final judgment upon the verdict of the jury.

Stipulation and Certificate of Counsel

Final judgment in the foregoing matter having been rendered on the 10th day of October, 1966, counsel for the Commonwealth and the defendant hereby stipulate and

certify the foregoing Statement of Motions and other incidents of trial and hereby affix their signatures to the foregoing statement to the end that the same may become part of the record on appeal.

Given under our hands this 3rd day of December, 1966.

BY: /s/ HENRY W. MCLAUGHLIN, JR.
Henry W. McLaughlin, Jr.
Halifax, Virginia, Counsel for
the Defendant

BY: /s/ HENRY W. MCLAUGHLIN, III
Henry W. McLaughlin, III
Halifax, Virginia, Counsel for
the Defendant

BY: /s/ J. WILLARD GREER
J. Willard Greer, Halifax,
Virginia, Commonwealth's Attorney

Certificate of Trial Judge

Date tendered December 3, 1966
Date signed December 3, 1966.

/s/ G. E. MITCHELL, JR.
G. E. Mitchell, Jr., Judge

Certificate of Clerk

Date received December 3, 1966

/s/ H. M. SIZEMORE, *Clerk*
Clerk.

On October 10, 1966, the Court overruled the motion to set aside the verdict and grant a new trial, stating the following:

[R. PP. 30-32]

JUDGE MITCHELL: I have checked over the record and read the brief that the attorneys filed, ... I don't believe there is any question that the statement made and used was a voluntary statement, and that the Sheriff used good judgment in explaining to him that he was entitled to an attorney, and I think Mr. Satterfield understood that fact. He, of course, wanted to get out of their custody; but, I don't think that the cold, or whatever else he complained of caused him to make a confession except under voluntary circumstances, and under his own will and his own choice. The manner in which he was handled, I think, shows consideration as far as the Sheriff is concerned. The Sheriff stopped questioning him when he wanted him to, and went home, and told Mr. Satterfield if he wanted to get in touch with him, if he wanted to make any further statements in regard to this, then the deputy would reach him and he would come right back. This is what actually did happen, and Mr. Satterfield had an opportunity to reflect upon the situation, and he had the Sheriff come back and he made the statement, which I think was voluntary and met the requirements as far as the constitution is concerned. I don't think any of his rights have been violated, so the court will hold, and will enter up judgment on the jury's verdict in this particular case, and I suppose if you want it the state will give you an opportunity to perfect an appeal of this case.

After overruling defense motions, the Circuit Court of Halifax County entered final judgment on the jury verdict and counsel for the petitioner excepted, as set forth below:

[R. PP. 31-32]

VIRGINIA: IN THE CIRCUIT COURT OF HALIFAX COUNTY ON OCTOBER TENTH, NINETEEN HUNDRED SIXTY-SIX, AND IN THE 191 YEAR OF OUR COMMONWEALTH

PRESENT: THE HONORABLE G. E. MITCHELL, JR., JUDGE PRESIDING

COMMONWEALTH OF VIRGINIA

VS.

WALLACE F. SATTERFIELD

Hearing on Motions
Original Trial on July 29, 30, 1966

This cause came on the 8 day of October to be heard, having been tried by jury on the 29 day of July 1966, as shown on Common Law Book 34, page 473, and continued to this day for hearings on motions as shown in the record; came also the Commonwealth's attorney and Mr. Henry W. McLaughlin, Jr., and Mr. Henry W. McLaughlin, III, attorneys for the accused; also the defendant, appearing pursuant to his own recognizance.

Here the Court heard the argument of counsel on the motions as stated in the record, and doth overrule said motions to set aside the verdict, to which ruling the defendant by his counsel doth except; and it being demanded of the accused if anything he had, or knew, to say, why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment it is accordingly the judgment of this court, that the defendant be, and he is hereby, sentenced to serve 40 years in the penitentiary of this Commonwealth, the period as ascertained by the jury aforesaid, and that the Commonwealth of Virginia do recover its costs by it about this prosecution expended . . : .

On December 5, 1966 an Amended Assignment of Error was filed in the Clerk's Office of the Circuit Court of Halifax County, Virginia, assigning the following as error:

[R. PP. 45-46]

Wallace Franklin Satterfield assigns his error as follows:

1. The Circuit Court erred in admitting into evidence before the jury, over objections and exceptions of counsel for the defendant, evidence for the Commonwealth of statements made by the defendant to police authorities beginning at approximately 8:15 o'clock on the night of January 19, 1966 while the defendant was incarcerated in the Halifax County jail, said statements purporting to constitute a voluntary confession of guilt; the foregoing being error because the Commonwealth did not sufficiently prove that defendant's rights secured to him by the Fifth and Sixth Amendments to the United States Constituion and as set forth in the case of *Miranda* v. *Arizona* were protected because it was not proven that police authorities effectively and clearly informed defendant of his right to silence and his right to retained or court appointed counsel and because it was not shown that the defendant voluntarily, intelligently and without threatening or cajolery waived his right to silence and his right to counsel before interrogation and before incriminating statements were obtained from him, but on the contrary, the evidence showed that the defendant's rights were not protected prior to his confession by the safeguards required by the Fifth and Sixth Amendments to the United States Constitution and as set forth in the case of *Miranda* v. *Arizona*.

On February 9, 1967, Counsel for petitioner filed in the Supreme Court of Appeals of Virginia at Richmond the record and transcript of the proceedings below and a petition for a writ of error and supersedeas, as shown, R. 50A, 51, 55-56 and see notations of receipt on transcript and Table of Contents of Circuit Court of Halifax County.

*The petition for appeal and supersedeas was lengthy and raised the same issues set forth in the petition for certiorari; therefore the petition for appeal and supersedeas is not printed in its entirety. However, since the Supreme Court of Appeals of Virginia, by way of a denial of a writ of error, declined to review the final order of conviction of the Circuit Court of Halifax County, and since there was therefore no reported opinion of the Supreme Court of Appeals of Virginia, the preliminary statement in the petition for appeal and supersedeas, which summarizes the argument presented in that petition, and the conclusion of that petition, are set forth below:**

[R. PP. 51-56]

PETITION FOR WRIT OF ERROR

TO THE HONORABLE THE CHIEF JUSTICE AND THE JUSTICES OF THE SUPREME COURT OF APPEALS OF VIRGINIA:

Preliminary Statement

This appeal of a first degree murder conviction presents questions involving the rules laid down in *Miranda* v. *Arizona*, 384 U. S. 436 (June 13, 1966) on the exclusion from evidence of incriminating statements unless certain requirements are proven to have been met.

The Supreme Court of Appeals has not heretofore had occasion to decide a case arising under *Miranda*, that case being applicable only to trials begun after June 13, 1966, the date *Miranda* came down. This case, tried on the 29th and 30th of July, 1966 in the Circuit Court of Halifax County, Virginia, is among the first confession cases in Virginia in which the law set forth in *Miranda* must be applied. The answers to the questions presented by this case

* Footnotes are omitted.

will inevitably determine the course of numerous criminal trials in the Commonwealth.

In the trial of Wallace Franklin Satterfield, the Commonwealth's case depended primarily upon evidence of a confession obtained from the defendant while in police custody without the benefit of counsel. The issue in this case is whether the confession should have been ruled inadmissible because the Commonwealth did not prove that it had met the requirements set forth in *Miranda*.

Although the trial court overruled the arguments by the defense that the confession was inadmissible as evidence, the trial court did indicate that the question was in its opinion a close one. In deciding, after final judgment was entered, that the defendant should be granted a new bond at that time pending appeal, the court stated that the outcome of the appeal appeared in sufficient doubt to justify such use of the court's discretion. (R. 37) In viewing the defendant's chances for success on appeal, the court stated, "there might be some merit to this case." (R. 36)

It is the position of the appellant that neither the letter nor the spirit of *Miranda* was complied with. Your appellant submits that violation of the spirit of *Miranda* was shown by the totality of the circumstances surrounding the confession; the defendant's sub-normal intelligence, his history of near-fatal spinal meningitis, his sickness and suffering from cold on the day of the confession, alternating verbal abuse and assurances of friendship by the sheriff, the action of the sheriff in overriding the defendant's wishes not to be interrogated and other psychological pressures. But in addition, appellant submits that the following specific requirements in *Miranda* were not complied with:

(1) Under *Miranda*, no confession obtained from a suspect in police custody without the benefit of an attorney can

be admissible unless the Commonwealth bears a "heavy" burden of proving that the defendant clearly understood his right to counsel and rejected that right before any interrogation began. The evidence of the Commonwealth showed that the defendant could not have understood that he had a right to counsel before he was interrogated, or even before the confession was first obtained, because subsequent to the confession the defendant stated on tape, while in a spirit of co-operation with police authorities, that he did not at that time understand his right to counsel.

(2) Under *Miranda,* a silent record will be presumed against the Commonwealth on the question whether the defendant's statements in the absence of counsel were obtained pursuant to an intelligent waiver of his rights. Thus, where there is not evidence of intelligent waiver, in-custody statements made in the absence of counsel are inadmissible. There was no evidence whatsoever in the record to show that the defendant, either before he was first interrogated or until after he had first confessed, indicated in any manner that he understood his right to counsel. Therefore no proof of intelligent waiver could possibly be found.

(3) Under *Miranda,* no in-custody interrogation in the absence of counsel can proceed where there is any doubt at all about the defendant's financial ability to retain counsel unless the defendant is advised prior to interrogation of his right to court-appointed counsel. There was no evidence that the defendant was ever advised of his right to court-appointed counsel. Therefore the confession should have been excluded from evidence.

(4) Under *Miranda,* no in-custody confession in the absence of counsel can be admitted where there is any evidence of cajolery. The confession should have been excluded

from evidence because the sheriff virtually conceded defense testimony that he had created a situation in which the defendant's freedom on bond depended upon his making a confession.

The lower court ruled against these arguments. The court overruled defense motions to exclude the confession from evidence, overruled a later motion for a mistrial because of the inclusion of the confession in evidence, overruled motions to set aside the jury verdict and grant a new trial, and on October 10, 1966, entered final judgment on the jury verdict finding the defendant guilty of murder in the first degree and sentencing him to forty years in the penitentary system of the Commonwealth.

* * *

Conclusion

In its emphasis upon the failure of proof of waiver of constitutional rights, the thrust of this appeal is upon the substance and not the form required in *Miranda*. Without the requirement of proof of waiver, *Miranda* would have been a set of empty rules. To decline to give effort to this requirement of proof of waiver would be to subvert the clear meaning of that decision. It is submitted that in this case the Commonwealth totally failed to bear its burden of proof of compliance with *Miranda* but that on the contrary the evidence proved violation of those requirements. Therefore, the confession should have been excluded from evidence. Since the admission of the confession into evidence was obviously prejudicial to the defendant, the verdict of the jury and final order by the Lower Court should be set aside.

Therefore, appellant respectfully requests that his petition for a writ of error and a supersedeas be granted, that

the final order of the Court below and the verdict of the jury be set aside and the case remanded for a new trial.

Respectfully submitted,

WALLACE FRANKLIN SATTERFIELD
BY: /s/ HENRY W. MCLAUGHLIN, III
Of Counsel.

On March 7, 1967, the Supreme Court of Appeals denied the petition for appeal and supersedeas on the grounds that the judgment of the Circuit Court of Halifax County, Virginia was plainly right, as set forth below:

[R. P. 57]

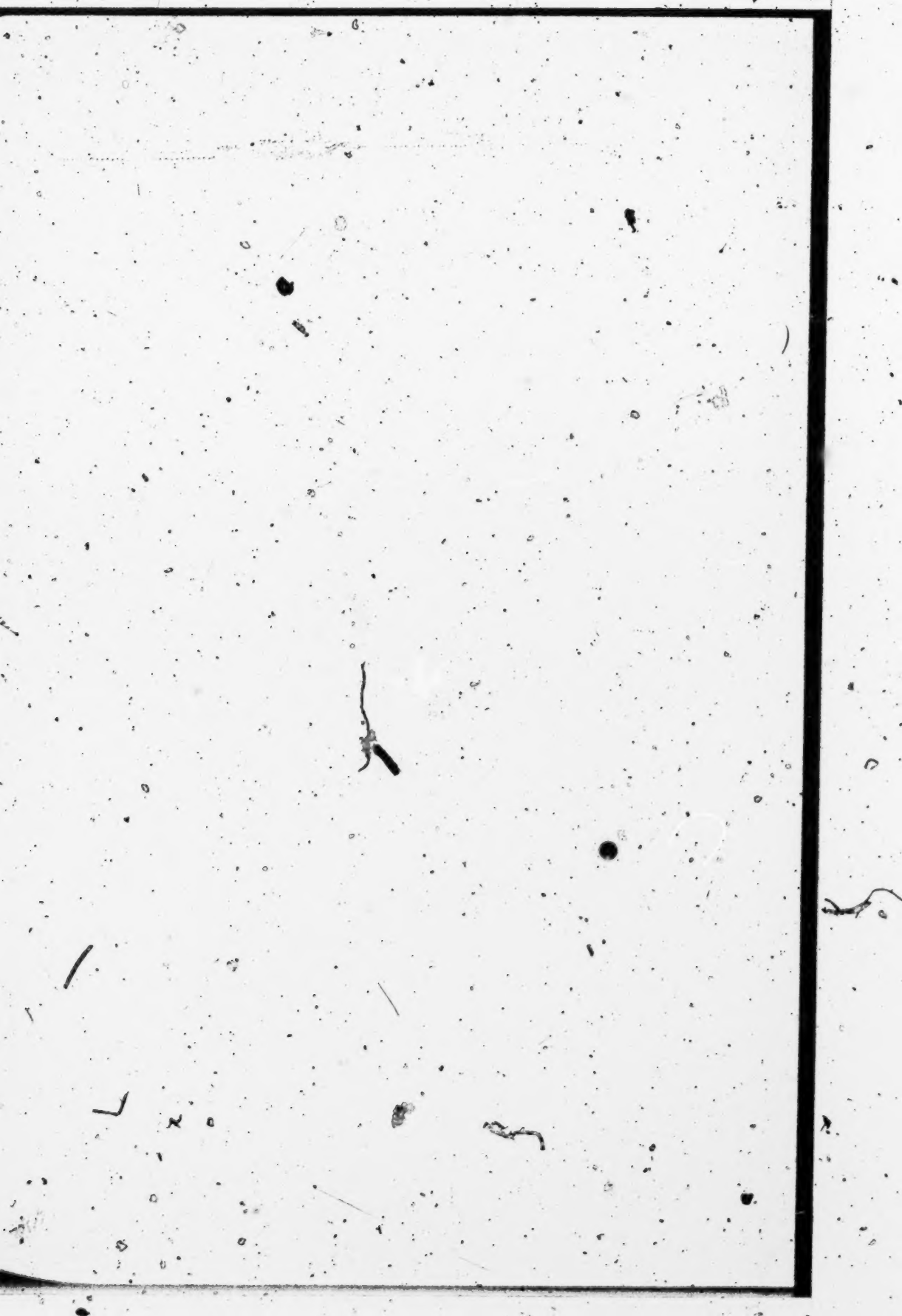
VIRGINIA: *In The Supreme Court of Appeals Held At The Supreme Court Of Appeals Building In The City Of Richmond On Tuesday The 7th Day Of March, 1967.*

The petition of Wallace Franklin Satterfield for a writ of error and supersedeas to a judgment rendered by the Circuit Court of Halifax County on the 10th day of October, 1966, in a prosecution by the Commonwealth against the said petitioner for a felony, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said circuit court.

A Copy,

Teste:

/s/ H. G. TURNER
Clerk



SUPREME COURT, U. S.

FILED
NOV 6 1967
JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1967

No. 216

WALLACE FRANKLIN SATTERFIELD,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

J. WILLARD GREER
Commonwealth's Attorney
for Halifax County

Courthouse Building
Halifax, Virginia

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PRELIMINARY STATEMENT

By letter of the Honorable John F. Davis, Clerk of the Supreme Court of the United States, dated October 10, 1967, the Attorney General of Virginia was requested to file a response to the petition for writ of certiorari in the instant case.[1] In accordance with this request, the within brief of the respondent in opposition to the petition for writ of certiorari is filed by the Commonwealth's Attorney for Halifax County, Virginia pursuant to the advice of the Attorney General of Virginia in his letter dated October 11, 1967, to the Clerk of this Court.[1]

[1] Post, Appendix A and B.

PRIOR PROCEEDINGS

On July 30, 1966, petitioner was found guilty by a jury in the Circuit Court of Halifax County of murder in the first degree, and his punishment was fixed at forty years in the penitentiary. His subsequent motion to set aside the verdict was overruled and judgment was entered on the verdict on October 10, 1966. A petition for writ of error to the judgment of conviction was denied by the Supreme Court of Appeals of Virginia on March 7, 1967. The case is currently before this Court upon petition for writ of certiorari to the Supreme Court of Appeals of Virginia, filed in the Supreme Court of the United States by the petitioner on June 2, 1967.

STATEMENT OF FACTS

On the night of January 18, 1966, Dr. N. H. Wooding, one of the Medical Examiners for Halifax County, telephoned Sheriff C. T. Coates and informed him that one Jeffrey Ronald Brenner, age three, died from arsenic poisoning on December 22, 1965. The deceased child was the petitioner's step-son. (T. 91)[1]

After interviewing the mother of the deceased child (petitioner's wife) the next morning, the Sheriff arrested the petitioner and charged him with the murder of the child on December 21, 1965, and he was lodged in jail at 12:40 p.m. The petitioner denied any knowledge of the cause of the child's death, and again, between 6:30 and 7:00 p.m. that evening when the Sheriff interviewed him again, he denied any knowledge of the matter. (T. 92-93) Sheriff Coates told the petitioner he was going home, but if the petitioner wanted to tell him anything else that night

[1] References to the transcript are indicated by the letter "T," followed by the appropriate page number of the Transcript.

to get one of the deputies or jailer to call him. (T. 94)

After the Sheriff had been home a short while, he received a telephone call from the jail that the petitioner wanted to see him. The Sheriff went back to the jail and the petitioner was brought to his office at 8:15 p.m. by two deputies. In the presence of the two deputies, the petitioner, made an oral confession to the Sheriff and then the confession was put on tape. (T. 94-96, 109-111, 129-130, 136-137) The oral confession and the taped confession were concluded at 8:40 p.m. (T. 96) Around noon the next day after the taped confession had been transcribed the petitioner signed it in the presence of the same three officers. (T. 97-98, 130-131, 137)

With the jury excluded, the trial judge heard the Commonwealth's witnesses and the petitioner's witnesses to determine the admissibility of the confession. (T. 90-192)

The Sheriff testified that prior to the taped confession the petitioner had been advised of his "rights" three times, once when the petitioner was arrested, again between 6:30 and 7:00 p.m. and before the oral confession at 8:15 p.m. (T. 92, 94-95, 106-111)

A portion of the taped confession was as follows:

> SHERIFF: You understand, Frank, you don't have to make any statement if you don't want to, you understand that?
>
> PETITIONER: Yes.
>
> SHERIFF: You understand that any statement you make can be used against you in court, you understand that?
>
> PETITIONER: Yes.
>
> SHERIFF: You understand that you have the right to an attorney before you make any statement, you understand that?

PETITIONER: That's right. I reckon. I don't know about that.

SHERIFF: Now wait a minute. You have the right to an attorney before you make any statement, you understand that?

PETITIONER: Oh yes.

SHERIFF: All right. Now nobody has promised you anything?

PETITIONER: No.

SHERIFF: Nobody has promised you any favors of any kind or made any threats towards you?

PETITIONER: No.

SHERIFF: Are you making this statement of your own free will?

PETITIONER: Yes. (T. 95)

And then the confession was concluded as follows:

SHERIFF: Now, Frank, who is in here listening to you while you make this statement besides myself?

PETITIONER: Roy Pruett and I don't know him.

SHERIFF: Roy Pruett and Monroe Anderson, both of them are Deputy Sheriffs, both of them have on uniforms? Correct?

PETITIONER: That's right.

SHERIFF: All right and you have given this statement of your own free will and accord?

PETITIONER: That's right. (T. 96)

The petitioner testified that he had confessed only because he was cold, sick, tired, hungry, cursed by, and afraid of, the Sheriff, and that if he confessed, the Sheriff said he could go home. (T. 153-155, 157-158, 161, 166-167, 169-170). The petitioner claimed the Sheriff had denied bond until he con-

fessed, but he was not supported in this charge by his own father, Bedford Satterfield. (T. 146-147) Sam Rogers, brother-in-law of the petitioner, would not support this charge either. (T. 185) The Sheriff denied the charges of the petitioner. (T. 98, 103-104, 106) The two deputies denied the charges as well. (T. 131-132, 137-139)

After hearing testimony and arguments for two hours and fifty minutes, the trial judge ruled that the confession "is certainly voluntary as far as that goes without any question" and ordered that it be admitted into evidence. (T. 222-223)

QUESTION PRESENTED

Were the constitutional rights of the petitioner infringed by the trial court's ruling admitting into evidence the petitioner's confession obtained by the Sheriff in an interview initiated by the petitioner while in custody?

ARGUMENT

The Virginia procedural rule governing admissions of confessions was recently stated by Mr. Justice Carrico in *McCoy* v. *Commonwealth,* 206 Va. 470, 475, 144 S.E. 2d 303, 308 (1965):

> "The respective roles of the court and jury with regard to confessions are well established in this Commonwealth and were best delineated by Mr. Justice Spratley in Upshur v. Commonwealth, 170 Va. 649, 655, 197 SE 435, as follows:
>
> "In Virginia, it is the function and the duty of the trial judge in the first instance before admitting a confession, to determine from the evidence, in the absence of the jury, whether the confession has been freely and voluntarily made. In this decision of a question of fact he has a wide discretion . . .

> "Thus the admissibility of a confession is a question for the court, and not for the jury. The court does not vouch for the confession, but admits it to the jury to be considered and weighed like other evidence. Its weight, its value and its sufficiency is a question for the jury."

The rule in Virginia relating to the admissibility of confessions was approved by this Court's decision in *Jackson* v. *Denno,* 378 U.S. 368 (1964). The practice required by Virginia and by the pronouncements of this Court in the *Jackson* case were followed by the trial court in the case at bar. It conducted a full hearing on the admissibility issue in the absence of the jury; it ruled that the confession was voluntary without going into the truth or falsity of the confession. And finally, the court permitted the petitioner to explore before the jury the full circumstances surrounding the giving of the confession, so that the jury could consider voluntariness as affecting weight or credibility of the confession.

Here the evidence of the Commonwealth, in the absence of the jury, was amply sufficient to show the petitioner confessed voluntarily in traditional terms. Because the petitioner attacks the credibility of the witnesses and the confession, the respondent will answer this contention before discussing the question of the infringement of the petitioner's constitutional rights.

The petitioner's story that he was cold, sick, tired, hungry, cursed, afraid, etc., that he was promised bond in return for his confession merely raised, at best, a controverted issue of fact. (T. 153-155, 157-158, 161, 166-167, 169-170) That issue was for the trial court to determine and it cannot be said to have erred in accepting that version of the evidence which proved that the petitioner was not cursed and mistreated, that he made no complaints about

the state of his health and that no promise of bond was made to the petitioner if he confessed. (T. 95, 98, 103-104, 106, 131-132, 137-139, 146-147, 185)

The trial judge had the opportunity to hear the witnesses, observe their demeanor, their candor on the witness stand and from what he heard and observed, made his decision. The testimony of the two deputies is in direct conflict with many of the petitioner's complaints. Deputy Sheriff Pruitt, who testified he had known the petitioner twelve to fifteen years, said the petitioner "looked like he always did"; that he made no complaints to him of being hungry, tired or sick; that he was in a single cell with the same bed, bedding, sheets, and pillows that every other prisoner had; and that the defendant never complained to him about any discomfort at all. (T. 137-139) Deputy Sheriff Anderson's testimony is substantially the same as Pruitt's, however, Anderson had not known the petitioner very long. (T. 129-132)

The petitioner's contention that the Sheriff created a situation in which the petitioner's freedom on bond depended upon a confession is contrary to the petitioner's signed statement, the testimony of the Sheriff, the petitioner's father and brother-in-law. (T. 95, 98, 103-104, 106, 146-147, 185)

The petitioner's contention that the Sheriff overrode his attempt to invoke silence simply ignores the fact that the petitioner sent for the Sheriff. (T. 94, 130) Petitioner argues that when the tape recorder was turned off one time, he was invoking his right to silence, but on cross examination of Deputy Sheriff Anderson, the trial court heard the following exchange:

> QUESTION: Now, Mr. Anderson, do you know why it was turned off during the course of the interrogation?

ANSWER: Do I know why it was turned off?

QUESTION: Yes.

ANSWER: Well, the Sheriff asked Mr. Satterfield what did he poison that child for and put the poison in the drink, was it to draw insurance, and Mr. Satterfield dropped his head, no sir, and he worried for a right good while, and then the Sheriff cut it off, and then he raised up and said, "Yeah, that's what I put the poison in the drink for." (T. 135)

The only testimony heard by the trial judge on the length of time the tape recorder was turned off was given by the Sheriff as being not over a minute. (T. 119).

This twenty-three year old petitioner claims he was so weak minded the Sheriff made him confess (T. 170-172), and yet, the petitioner had a sixth grade education, had been gainfully employed for three years at a textile plant, had an automobile operator's license, and possessed sufficient cunningness to forge a check on Harry Mapp, a local attorney, a year or two before his confession was made. (T. 113, 151, 171-172)

The record in this case conclusively shows that before he confessed, the petitioner had been arrested upon a valid warrant; that he was lodged in the county jail; that he had not been subjected to lengthy interrogation; that he was allowed to see members of his family before he confessed (T. 125); that on the evening he confessed, he sent for the sheriff who was at home at the time; that he was told that he did not have to make any statement if he did not want to; that any statement he made could be used against him in court; and that he had a right to an attorney before he made a statement. He acknowledged that he had not been promised anything; that no favors of any kind had been promised; that no one had made any threats toward him; and he stated that he was making the statement of his

own free will. He acknowledged that two deputies were present with the Sheriff when his statement was given, and again, at the conclusion of the statement, he states that he has given the statement of his own free will and accord. The next morning around noon, the petitioner signed a typed copy of his statement in the presence of the same three witnesses. (T. 94-98, 130-131; 137).

It is submitted the trial judge did not abuse his discretion when he ruled:

> "The matter has been well argued and presented to the Court. At the time the statement was taken, of course, they were holding the Miranda case. And, I believe all the rules and requirements were met by the Sheriff as far as he was concerned in advising and warning this man. Everybody agrees, I suppose, it was voluntary, because the Sheriff started talking to him about six-thirty, and the man didn't talk. So, he stopped at that time and he told him if he did want to talk anymore to let him know. And the Sheriff was called and he came back. And the man gave the statement.
>
> "So I think that is certainly voluntary as far as that goes without any question. Now, as to the advising the man to an attorney, I think that the requirements were met. I think the gentleman must have understood what an attorney was. It's true that practically everybody refers to representatives as a lawyer. There may be some as attorneys, but I think they all know the term is used synonymously I think. And they understand what it means.
>
> "So I think under the circumstances in this case that the Miranda case is met in the spirit at least. And I think we should allow the statement to go in evidence." (T. 222-223)

The petitioner cites *Miranda* v. *Arizona,* 384 U.S. 436 (1966), but the facts in that case and the facts in the three

companion cases included in that decision are so different from the case at bar that it is not decisive of the issue here.

The factual variance in the four cases is easily demonstrable. In *Miranda*, (1) the accused was not in any way apprised of his right to consult with an attorney (2) he was not warned effectively against self-incrimination (3) he was held incommunicado and interrogated for two hours (4) the interrogation was initiated by law enforcement officers.

In *Vignera*, (1) the accused was given no warnings (2) he was not advised of any of his rights (3) he was held incommunicado and interrogated at 11:00 p.m., some eight hours after his arrest (4) the interrogation was initiated by law enforcement officers.

In *Westover*, (1) the accused was held incommunicado (2) before any warnings were ever given him by the FBI agents, he had been in custody for over 14 hours and had been interrogated at length during that period by local police (3) the interrogations were initiated by law enforcement officers.

In *Stewart*, (1) the accused was held incommunicado and interrogated nine times over a period of five days (2) he was not advised of his right to remain silent (3) he was not advised of his right to counsel (4) the interrogations were initiated by law enforcement officers.

In striking contrast is the situation here under consideration. In the case at bar, (1) petitioner was allowed to see members of his family before he confessed (2) he was not subjected to lengthy interrogation (3) he initiated the interrogation by sending for the Sheriff (4) he was told he did not have to make any statement if he did not want to (5) that any statement he made could be used against him in court (6) that he had a right to an attorney before he made any statement.

Moreover, the *Miranda* case does not say a law enforcement officer may not listen to one who wishes to confess to a crime. Mr. Chief Justice Warren makes this very clear:

> "In dealing with statements obtained through interrogation, we do not purport to find all confessions inadmissible. Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of the warnings and counsel, but whether he can be interrogated. There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today." 384 U.S. 478

Under the *Miranda* decision the decisive stage is reached when "custodial interrogation begins," and "custodial interrogation" is defined as questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. 384 U.S. 444 In the case at bar, the questioning which resulted in the petitioner's confession was not initiated by law enforcement officers. The petitioner called for the Sheriff, and between 8:15 p.m. and 8:40 p.m., just twenty-five minutes, the petitioner unburdened his soul—this included his oral confession and the taping of his confession in a question and answer form.

In the face of the foregoing, the confession was freely and voluntarily given. Its introduction into evidence, under such circumstances, violated no established principles of

due process. Here, we have a petitioner who has been lodged in his cell for the night, and after reflecting upon his relationship to himself, to his family and to society, he decides to confess. He is not motivated by anything the law enforcement officers have done. And through his own shame for poisoning a three year old child, he cries out, "Call the Sheriff." This petitioner had been put to bed. The Sheriff had gone home. Where are there any compelling influences by a law enforcement officer in this situation?

Clearly, the trial judge correctly determined that the factual situation in the *Miranda* case was so different from that which obtained in the case at bar that the decision in the former was not decisive of the issue here.

In the light of the foregoing, counsel for the respondent submit that no constitutional right of the petitioner was infringed by the trial court admitting the confession into evidence.

CONCLUSION

For the foregoing reasons, counsel for the Commonwealth submit that the petition for writ of certiorari in this case should be denied.

Respectfully submitted,

J. WILLARD GREER
Commonwealth's Attorney for Halifax County

Courthouse Building
Halifax, Virginia

ROBERT Y. BUTTON
Attorney General of Virginia
Supreme Court–State Library Building
Richmond, Virgina 23219

CERTIFICATE OF SERVICE

I, J. Willard Greer, Commonwealth's Attorney for Halifax County, Virginia, a member of the Bar of the Supreme Court of the United States and one of counsel for appellee in the above captioned matter, hereby certify that a copy of this Brief for Respondent in Opposition To The Petition for Writ of Certiorari has been served upon counsel of record for the petitioner herein by depositing the same in the United States Post Office, with first-class postage prepaid, this 6th day of November, 1967, pursuant to the provisions of Rule 33(1) of the Rules of the Supreme Court of the United States, as follows: Henry W. McLaughlin, Jr., Esq., McLaughlin and McLaughlin, Courthouse Square, Halifax, Virginia, counsel for petitioner.

J. WILLARD GREER
Commonwealth's Attorney of
Halifax County, Virginia

Appendix A

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

October 10, 1967

The Honorable Robert Y. Button
Attorney General of Virginia
Richmond, Virginia 23219

RE: WALLACE FRANKLIN SATTERFIELD
v. VIRGINIA
No. 216, October Term, 1967

Dear Sir:

A petition for a writ of certiorari was filed in this Court on June 2, 1967, in the above-entitled case. My records indicate that you were served with a copy of the petition.

The Court has directed me to request that you file a response to the petition. Forty printed copies of your response with service, should reach this office on or before November 10, 1967.

Very truly yours,
JOHN F. DAVIS, Clerk
By /s/ E. P. CULLINAN
Chief Deputy

jmh

cc: J. Willard Greer, Esq.
Commonwealth's Attorney
Halifax, Virginia

Henry W. McLaughlin, Jr., Esq.
Courthouse Square
Halifax, Virginia

Appendix B

COMMONWEALTH OF VIRGINIA
OFFICE OF
THE ATTORNEY GENERAL
RICHMOND

October 11, 1967

Honorable John F. Davis, Clerk
Supreme Court of the United States
Washington, D. C. 20543

RE: WALLACE FRANKLIN SATTERFIELD
v. VIRGINIA
No. 216, October Term, 1967

Dear Mr. Davis:

I am in receipt of your letter of October 10, 1967, in connection with the above-captioned case.

In this connection, I am writing to advise that the response to the petition in question will be prepared by J. Willard Greer, Esq., Commonwealth's Attorney for Halifax County, Virginia.

Very truly yours,

/s/ ROBERT Y. BUTTON
Attorney General

7-25
cc: J. Willard Greer, Esq.

SUPREME COURT, U. S.

FILED

NOV 28 1957

JOHN F. DAVIS, CLERK

No. 216

IN THE

Supreme Court of the United States

WALLACE FRANKLIN SATTERFIELD,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

HENRY W. McLAUGHLIN, JR.
McLaughlin and McLaughlin
Courthouse Square
Halifax, Virginia
Counsel for Petitioner

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IN THE

Supreme Court of the United States

No. 216

WALLACE FRANKLIN SATTERFIELD,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice and the Justices of the Supreme Court of the United States:

I.

The Commonwealth's Statement Of Facts Is Misleading In Two Instances And Otherwise Fails To Add Materially To The Facts Set Forth In The Petition For Certiorari.

The Statement of Facts in the Commonwealth's brief is misleading in the following two instances:

(1) Testimony of Petitioner And His Family Regarding The Use Of The Petitioner's Hopes For Freedom On Bond As A Lever To Elicit The Confession.

On this issue, the Commonwealth knocked down a straw man. The Commonwealth asserted in argument that "The petitioner's contention that the sheriff created a situation

in which the petitioner's freedom on bond depended upon a confession is contrary to . . . the testimony of . . . the petitioner's father and brother-in-law." Specifically, the Commonwealth asserted that the petitioner claimed in testimony that "the sheriff had denied bond until he confessed. . ." and that the petitioner's father and brother-in-law "would not support this charge." These statements are misleading. Instead of controverting the petitioner's testimony, his family's testimony corroborated it.

The Commonwealth cited no portion of the record in which the petitioner testified that he was "denied bond until he confessed." There was no such testimony. The import of the petitioner's testimony was that the sheriff implied that he had influence over whether the petitioner would go free on bond and that this influence would be used in favor of the petitioner in the event of a full statement. (T. 158, 167, 178)[1] The petitioner testified that the sheriff told him that if he made a statement, "I will let you go home. I will call your daddy and he can come get you tonight." (T. 178)

In support of its assertion that the petitioner's family "would not support" the petitioner's "charge," the Commonwealth cited testimony by the petitioner's family on cross-examination that at no time did the sheriff tell them that they had no right to bond the petitioner out. (T. 146-147, 185) It had never been claimed by anyone that the sheriff had made that sort of statement.

The testimony of the family was that before the confession was obtained, (T. 142-148) the petitioner's father, having brought a bondsman with him to the jail (T. 145), was dissuaded from his intention to have his son bonded

[1] References to that part of the Record contained in the Transcript of the trial on the 29th and 30th of July 1966 are indicated by the letter "T," followed by the appropriate page of the Transcript.

out only by the sheriff's statement that he would rather have the petitioner left in jail overnight so that a lie detector test could be made the next day. (T. 142-148) The petitioner's father further testified that sometime that night the sheriff telephoned him to say that the petitioner had confessed and his father could come get him. (T. 144, 146-147) All of the above testimony was given repeatedly and consistently throughout the trial, was maintained during the portions of the record cited by the Commonwealth. (T. 146-147, 185)[2] and was in its essential details admitted by the sheriff. (T. 104-105, 103-104, 238)

(2) EVIDENCE OF CURSING.

The Commonwealth's brief asserted that the petitioner's testimony that the sheriff cursed him was controverted by other evidence. A check of the portions of the record cited by the Commonwealth in support of this assertion will show that nowhere in them is there anything to controvert the testimony by the petitioner (T. 154, 158, 167) that he was cursed. There never was any such controverting evidence.

[2] The testimony of the petitioner's brother-in-law (T. 185) on the discussion about bond between the sheriff and petitioner's father on the afternoon before the petitioner confessed was hearsay as the petitioner's brother-in-law did not go to the jail until the day after the petitioner had confessed. (T. 382) Pressed by the Commonwealth Attorney on whether the petitioner had been "denied bond" the petitioner's brother-in-law alluded to the statement made by the sheriff to the petitioner's father that he preferred to have the petitioner taken for a lie detector test. (T. 186) Because this testimony did not pinpoint the time involved it could be interpreted to mean that the sheriff's statement came the morning after the petitioner had confessed, however both the petitioner's father (T. 142-148, 439-441) and the sheriff (T. 103-105) testified that the discussion between the sheriff and the petitioner's father in which the petitioner's father asked about bond and the sheriff told him he planned to take the petitioner for a lie detector test occurred *before* the confession was obtained.

The Commonwealth's brief included several citations to testimony not cited in the petition for certiorari, all of which citations are discussed *infra* as follows, organized along the lines of the issues set forth in the petition:[3]

(1) Use Of The Petitioner's Hopes For Bond As A Lever To Elicit The Confession.

The Commonwealth's brief pointed out that in the taping of the confession, the petitioner, in response to leading questions, affirmed that he had been promised no favors and that his confession was of his own free will. (T. 95-96). It is submitted that these answers, made after the petitioner's initial oral confession, considered in light of all of the evidence on this issue, do not overcome the persuasiveness of the evidence that the sheriff used the petitioner's desire for freedom on bond as a lever to elicit the confession.

(2) Overriding Of The Petitioner's Attempts To Invoke His Right To Silence.

The Commonwealth cited testimony by Mr. Monroe Anderson, deputy sheriff that during the time the petitioner's oral confession was being repeated on tape, when the petitioner was asked what his motive was, "he dropped his head, and he worried for a right good while, and then the sheriff cut it off, and then he raised up and said, 'Yeah, that's what I put the poison in the drink for.' " (T. 135)

[3] The issues regarding the failure of the sheriff to make the petitioner understand his Fifth and Sixth Amendment rights prior to his initial oral confession and his failure to advise the petitioner of his right to court-appointed cousel are omitted because as to these issues the Commonwealth neither cited nor referred to any of the relevant facts.

The Commonwealth's brief implied that this testimony showed that interrogation did not continue while the tape was cut off. Insofar as Mr. Anderson's testimony can be given that interpretation, it is in conflict with the testimony of the sheriff, who testified that "He didn't answer the question, and I cut it off and refreshed his memory, and then I repeated the question and he answered it." (T. 118)

(3) *The Totality Of The Circumstances Surrounding the Confession.*

(A) Visit Of The Family.

The Commonwealth pointed out that counsel for the petitioner in cross-examination of the sheriff indicated in the form of a question that members of the petitioner's family were allowed to visit him once during the afternoon before the confession was obtained. (T. 125) The Commonwealth contended that this shows a lessening of the pressures normally attendant to in-custody interrogation in the absence of counsel. However, the testimony of the sheriff made it plain that when the petitioner's family saw the petitioner, their role was not a supportive one, but that confrontation with his family upset the petitioner visibly. The sheriff testified as follows:

> I tell you what the trouble with Frank was. He was just as normal as anybody until some of his people come down. And when he had to confront his people, he would get nervous. Now, that's why they thought he was sick. Frank wasn't sick. (T. 235)

(B) The Lack Of Any Bedding.

The Commonwealth's brief states that "Deputy Sheriff Pruitt . . . said the petitioner . . . was in a single cell

with the same bed, bedding, sheets and pillows that every other prisoner had," citing the following testimony by Mr. Pruitt:

> Q. He had a bed and bedding and sheets and pillows and everything that every other prisoner had?
>
> A. He had everything just like the rest. (T. 139)

This testimony did not pinpoint the time involved. Mr. Pruitt testified shortly after this on cross-examination that he did not know whether the petitioner had been given bedding before he confessed, but that "on the day he's locked up you don't usually fix the beds at night when they lock the cells on the day you were locked up." (T. 140) This testimony tended to corroborate the testimony of the petitioner that he was not given bedding before he confessed and that he spent the first night without any bedding. (T. 179-180)

(C) The Petitioner's Mentality.

The Commonwealth's brief pointed out that the petitioner held a driver's license and that he had held his job in a textile mill for three years. (T. 171-172) It is submitted that these facts do not rebut the evidence of his mental defectiveness. The Commonwealth referred to an attempt by the petitioner to forge a check on Harry Mapp (T. 113, 151, 171-172) stating that Mr. Mapp is a "local attorney," a fact not found anywhere in the record. The fact of the attempted forgery was brought out in cross-examination of the sheriff by counsel for the petitioner; in that cross-examination the sheriff did not deny that in the attempted forgery the petitioner made no attempt to disguise

his own handwriting and that his attempt to pass the check was easily caught.[4]

(D) Petitioner's Sickness, Cold And Lack Of Food.

The Commonwealth's brief cited testimony by the two deputies that the petitioner appeared normal to them, and that he did not complain to them of sickness. (T. 129-132, 137-139) Also cited was testimony of one of the deputies, Mr. Anderson, that the cells seemed warm to him and that as far as he knew the petitioner had been fed the same as other prisoners. (T. 131-132)

However, the sheriff admitted that the petitioner was sufficiently "nervous" to make his family believe he was sick. (T. 235) It was not controverted that when the petitioner was brought into the sheriff's office the sheriff turned up the heat, (T. 158) that the petitioner was thinly clad and that the January weather was very cold. (T. 155-157) Nor was it controverted that the petitioner had not been able to hold down food for two days and that when supper was brought to him shortly before the confession, he could not eat it. (T. 153, 166)

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[4] The testimony on this point was as follows:

QUESTION: (By counsel for petitioner) Isn't it a fact that he forged a check in the name—Harry Mapp's name was signed to it and it was signed in Frank Satterfield's handwriting?

SHERIFF: I don't remember the details of it. It's been several years ago.

QUESTION: Well, did you have any difficulty in the case. It wasn't much trouble at all catching him on that case was it?

SHERIFF: I don't recall how much trouble we went to. (T. 113-114)

II.

The Confession Was Not Volunteered Within The Meaning Of Miranda Because The Petitioner's Act In Calling For The Sheriff Came After He Had Been Implicated By Statements Obtained From Him In Custody And After He Had Been Subjected To Strong Pressures.

The Commonwealth's brief tacitly admits that if the requirements of warnings and waiver set forth in *Miranda* v. *Arizona,* 384 U. S. 436 (June 13, 1966)[5] are applicable in this case, then the confession should have been ruled inadmissible.[6] However, the Commonwealth contends that the act of the petitioner in asking to see the sheriff shortly before his initial confession made the confession a "volunteered" statement within the meaning of *Miranda,* and that therefore the requirements set forth in *Miranda* are inapplicable in this case.

It is submitted that this argument is not well founded because it fails to take account of the coercive circumstances surrounding the petitioner's confinement in jail without counsel for more than seven hours and forty minutes before he sent word for the sheriff. (T. 125, 187-188, 270) During that time, statements obtained from the petitioner in the private interrogations by the sheriff had caught him in a web of incrimination. The sheriff had obtained from the petitioner a statement that the poison had not been put in beans in the Satterfield home "but put in something else" (T. 225) and had apparently obtained an admis-

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[5] Hereinafter referred to as *Miranda.*

[6] The Commonwealth made no attempt to deny that prior to the initial oral confession the petitioner's attempts at silence were overridden and represented to him as *de facto* indications of guilt; that the petitioner could not have understood his right to counsel before his initial oral confession and that he was never advised of his right to court-appointed counsel.

sion that he had bought a bottle of liquid rat poison before the death of the deceased child.[7] In addition to these admissions by the petitioner, the sheriff had obtained from the petitioner's wife a signed statement tending to incriminate the petitioner. (T. 242) Armed with these indicia of guilt, the sheriff, by implying that refusal to take a lie detector test would be a *de facto* admission of guilt, had secured from the prisoner an agreement to take such a test. (T. 243) In addition, the petitioner had been subjected to all of those pressures outlined in the petition for certiorari, including the manipulation of his desire for freedom on bond, (T. 158, 167, 178) the overriding of his attempts at silence, (T. 93, 110, 225-226, 254) the alternate cursing (T. 154, 158, 167) and assurances of friendship (T. 100-103, 238-241, 409-410) and the isolation in solitary confinement (T. 150) without bedding. (T. 97, 139-140, 179) All of the above occurred while the petitioner was in custody (T. 125) without the benefit of counsel (T. 187-188, 270) and without having any understanding of his right to counsel. (T. 111-112, 159, 161, 164-165) It is submitted that the petitioner's act of calling for the sheriff, in the context of the above pressures, and in light of the petitioner's mental defectiveness (T. 150, 159-160, 161-162, 386) and weakness of will (T. 153, 155-157, 166, 177, 184, 188) did not render the confession a "volunteered" statement within the meaning of *Miranda*.

It is also submitted that the signing of the confession the following day does not show voluntariness. The petitioner had spent the night in jail. (T. 168-169)

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[7] The sheriff testified that he might have gotten this information before the end of the second interrogation, but that he thought he was not told about this until he obtained the oral confession. (T. 244-246) However, in the taped statement (taken immediately after the oral confession was obtained that night) the sheriff stated "You told me today you kept it, (the bottle of poison) in the car." (T. 232)

III.

The Opportunity Of The Trial Court To Observe The Demeanor Of The Witnesses Does Not Estop This Court From Reviewing Controverted Facts.

The Commonwealth's brief indicates that wherever there is conflict in the evidence, this Court must accept that version of the evidence most advantageous to the Commonwealth because of the trial court's opportunity to observe the demeanor of the witnesses. It is submitted that this argument is not well founded because the trial court's only resolution of conflicting evidence in favor of the Commonwealth was the mixed finding of law and fact that the confession was "voluntary." (T. 222-223, R. 30-32)[8]

CONCLUSION

The Commonwealth's brief carefully delineates shadings of difference in the facts of the cases decided by *Miranda* and the present case, thereby tending to imply that Virginia courts are free to restrict *Miranda* to its facts. This possible implication is reinforced by the Commonwealth's summation:

> Clearly, the trial judge correctly determined that the factual situation in the *Miranda* case was so different from that which obtained in the case at bar that the decision in the former was not decisive of the issue here.

It is submitted that the facts in this case show more coersion than the facts of the cases decided by *Miranda*. Beyond that consideration, this case raises the question

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[8] References to the Record are indicated by the letter "R." followed by the appropriate page number, except that references to the Transcript of the trial on the 29th and 30th of July, 1966 are indicated by the letter "T." followed by the appropriate page number of the Transcript.

whether the Virginia courts will give full effect to that language in *Miranda* requiring intelligent and voluntary waiver of Fifth and Sixth Amendment rights prior to in-custody interrogation in the absence of counsel. If the meaning of *Miranda* is to be restricted in Virginia to its facts, the most natural place to begin is in the area of waiver. It is the thrust of this petition that the rulings of the lower courts in this case signal just such a danger to the future protection in Virginia of Fifth and Sixth Amendment rights.

Respectfully submitted,

WALLACE FRANKLIN SATTERFIELD

By: HENRY W. MCLAUGHLIN, JR.
Counsel

MCLAUGHLIN & MCLAUGHLIN
Courthouse Square
Halifax, Virginia

CERTIFICATE OF SERVICE

I, Henry W. McLaughlin, Jr. of Courthouse Square, Halifax, Virginia, a member of the Bar of the Supreme Court of the United States and of counsel for petitioner herein, hereby certify that a copy of this Reply to Respondent's Brief in Opposition to the Petition for Writ of Certiorari has been served upon counsel of record for the respondent herein by depositing the same in the United States Post Office, with first-class postage prepaid, this 27th day of November, 1967, pursuant to the provisions of Rule 33 (1) of the Rules of the Supreme Court of the United States as follows: Robert Y. Button, Esquire, Attorney

General of the Commonwealth of Virginia, Supreme Court-State Library Building, Richmond, Virginia 23219 and J. Willard Greer, Esquire, Commonwealth Attorney for Halifax County, Halifax, Virginia counsel for respondent.

HENRY W. MCLAUGHLIN, JR.